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ABSTRACT

When determining eligibility for certain services and providing needed and appropriate resources, human service agencies and education institutions often require that children and families share very private information about themselves. Laws and statutes are in place to protect the privacy of these individuals and to ensure that this information is released only when necessary. This quick training aid presents a brief set of resources to guide those providing an in-service training session on confidentiality. The packet contains a brief introduction to the topic with key talking points, fact sheets and guidelines, tools and handouts, and a directory of additional resources. (GCP)

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Center for Mental Health in Schools Training and Technical Assistance

A Center Quick Training Aid . . .

Confidentiality

This document is a hard copy version of a resource that can be downloaded at no cost from the Center's website http://smhp.psych.ucla.edu

The Center is co-directed by Howard Adelman and Linda Taylor and operates under the auspice of the School Mental Health Project, Dept. of Psychology, UCLA. Center for Mental Health in Schools, Box 951563, Los Angeles, CA 90095-1563 (310) 825-3634 Fax: (310) 206-8716; E-mail: smhp@ucla.edu

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Quick Training Aids

Confidentiality

Periodically, windows of opportunities arise for providing inservice at schools about mental health and psychosocial concerns. When such opportunities appear, it may be helpful to access one or more of our Center's *Quick Training Aids*.

Each of these offers a brief set of resources to guide those providing an inservice session. (They also are a form of quick self-tutorial.)

Most encompass
key talking points for a short training session
a brief overview of the topic
facts sheets
tools
a sampling of other related information and resources

In compiling resource material, the Center tries to identify those that represent "best practice" standards. If you know of better material, please let us know so that we can make improvements.

This Quick Training Aid was deigned as part of a set. Each is free online or a hardcopy can be ordered. It can be used online and/or downloaded at http://smhp.psych.ucla.edu – go to the Quick Find search and scroll down in the list of "Center Responses" and find the topic *Confidentiality*. The Quick Find also lists a wealth of other resources on this topic.

Guide for Suggested Talking Points

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I. Brief Overview 5

Three questions to be covered:

- **Why is confidentiality important?**
- **What are the limits of confidentiality?**
- **How should confidentiality dilemmas be addressed & info shared appropriately?**

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1. **Why is confidentiality important?**

   A. ***Reasons for Protecting the Privacy of Children and Families*** - (Excerpt from: "Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts," North Central Regional Educational Laboratory.) (http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs3lk2.htm). 6

   >Cover the list of eight reasons why confidentiality is important.

   B. ***Understanding Confidentiality*** - (Excerpt from: "Confidentiality: Protocol for Handling Issues of Confidentiality in Public Schools." Prepared by The Manitoba Teachers' Society – http://www.mbteach.org/confidentiality.htm) 7

      (1) Confidentiality is the obligation not to disclose willingly any information obtained in confidence. There are 4 basic principles upon which confidentiality is based.

      (2) Cover the guidelines for school staff to follow in protecting confidentiality.

      (3) Records must be kept and protected and procedures established for responding appropriately to requests for information.

2. **What are the limits of confidentiality?**

   A. **About the Limits of Confidentiality and Its Limitations on Helping** (Excerpt from: "Reframing the confidentiality dilemma to work in children's best interests" by L. Taylor & H. Adelman. Published in *Professional Psychology: Research and Practice*, v. 20, pp. 79-83, 1989. Also excerpted in the Center Introductory Packet on "Confidentiality and Informed Consent.") 10

      (1) Confidentiality is an ethical concern reflecting the right to privacy. It differs from privileged communication which is a legal concept.

      (2) As part of informed consent for an intervention, professionals must provide information about exceptions to the promise of privacy.

      (3) In addition to limits on confidentiality, there are times when keeping info confidential can seriously hamper helping an individual.

   B. ***Limits to Confidentiality for the Teacher and Student*** -. (Excerpt from: "Guidelines: The Dilemma of Confidentiality" by Rachel Kessler, The Passageways Institute – http://www.mediatorsfoundation.org/isel/confident.html) 13

      (2) Limits for school staff include situations where there is suicide threats or ideation, abuse, and drug/alcohol use on campus.

      (1) Students involved in confidential group interventions often find it difficult to refrain from breaking confidentiality and students need to learn about the problem and what to do.

3. **How should confidentiality dilemmas be addressed & info shared appropriately?**

   A. ***Confidentiality and School Social Work: A Practice Perspective*** - (Practice update from the National Association of Social Workers – http://www.naswdc.org/practice/update/cfs0202.htm) 15

   >Cover the twelve practice steps.

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B. ***Confidentiality in the Treatment of Adolescents*** - (Excerpts from: Stephen H. Behnke, JD, Ph.D. & Elizabeth Warner, PsyD, APA Monitor, Volume 33, No. 3, March 2002.) 19

>This piece addresses the specific question of how to deal with disclosures regarding involvement in illegal and/or sexual activities. Can be used as a stimulus for discussion and to explore the implications for working in schools.

C. ***The Confidentiality Dilemma*** - (Excerpt from: "Reframing the confidentiality dilemma to work in children's best interests" by L. Taylor & H. Adelman, in *Professional Psychology: Research and Practice, 20*, 79-83, 1989. Also excerpted in the Center Introductory Packet on "Confidentiality and Informed Consent.") 21

>The dilemma is how to avoid undermining confidentiality and still share info when it is in the best interest of a student to do so. Three points related to this involve (1) enhancing a student's motivation to share info when it is in her/his best interest to do so, (2) empowering students to do so, and (3) minimizing negative consequences of disclosure.

II. Fact Sheets /Guidelines

A. ***Information Sharing and the Family Educational Rights and Privacy Act*** (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, July, 1996, OJJDP Fact Sheet #39 – http://www.ncjrs.org/pdffiles/ 91286.pdf). 26

>Highlight the ways in which schools and the juvenile justice system need to work together in sharing info and protecting confidentiality for juvenile offenders.

B. ***Limits of Confidentiality*** 28

>Highlights the duties to warn and report abuse.

C. ***Guidelines for Protecting Confidential Student Health Information*** (Excerpt from: American School Health Association, 2000). 29

>Lists 8 specific guidelines.

III. Tools/Handouts

Here are some sample consent and release forms for use within schools and for exchange of information between agencies/institutions.

A. ***Consent to Exchange Confidential Information*** - (From the Center for Mental Health in Schools *Intro Packet on Confidentiality and Informed Consent.*) 31

B. ***Authorization to Release Information*** - (From the Longfellow Elementary School Interagency Project SMART Program in English and Spanish) 32

C. ***Consent to Treatment and Release of Confidential Information*** - (From the Bluegrass Interagency Mobilization for Progress in Adolescent and Children's Treatment) 34

D. ***Sample Request of Non-Parent for Access to Education Record*** - (From the U.S. Department of Education, National Center for Education Statistics, *Prortecting the Privacy of Student Records.)* 35

E. ***Sample Request (of Parent) to Review an Education Record*** - (From the U.S. Department of Education, National Center for Education Statistics, *Protecting the Privacy of Student Records)* 36

IV. Additional Resources

- ***Who Should Know What? Confidentiality and Information Sharing in Service Integration*** (By M. Soler & C. Peters, 1993, National Center for Service Integration. From the Early Head Start Nat. Res. Center website – http://www.ehsnrc.org/InformationResources/ResourceArticles/ftconf.htm) 38

  >Discusses how professionals may overcome the obstacles to collaboration between agencies and institutions and provides guidelines and precautions to consider when sharing information.

- ***Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts*** (From the N. Central Regional Educational Lab. website – http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs300.htm) 45

  >Discusses confidentiality in relation to collaborative teams and suggests ideas for professional development in this area (see section entitled "Illustrative Cases"). The resource provides links to a number of different on-line publications and tools related to confidentiality and info-sharing in providing services within schools. It also lists government offices and agencies that may provide assistance in the development of goals and guidelines for confidentiality.

- ***Additional References*** - further reading on confidentiality. 51

- ***Quick Find on Confidentiality*** 52

V. Originals for Overheads 58

The following can be copied to overhead transparencies to assist in presenting this material.

- *Reasons for Protecting the Privacy of Children and Families*
- *Limits of Confidentiality*
- *Required Contents of a Release Form*
- *Confidentiality Practices*
- *Helping Students by Sharing Info – When it is in their best interests to do so.*

This material provided by:	UCLA Center for Mental Health in Schools/ Los Angeles, CA 90095-1563 (310) 825-3634/ Fax: (310) 206-8716/ Email: smhp@ucla.edu Web: http://smhp.psych.ucla.edu

I. Brief Overview

1. Why is confidentiality important?

A. Reasons for Protecting the Privacy of Children and Families
(Excerpt from: "Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts," North Central Regional Educational Laboratory)

B. Understanding Confidentiality
(Excerpt from: "Confidentiality: Protocol for Handling Issues of Confidentiality in Public Schools." Prepared by The Manitoba Teachers' Society)

2. What are the limits of confidentiality?

A. About the Limits of Confidentiality and Its Limitations on Helping
(Excerpt from: "Reframing the confidentiality dilemma to work in children's best interests" by L. Taylor & H. Adelman. Published in *Professional Psychology: Research and Practice*, v. 20, pp. 79-83, 1989. Also excerpted in the Center Introductory Packet on "Confidentiality and Informed Consent.")

B. Limits to Confidentiality for the Teacher and Student
(Excerpt from: "Guidelines: The Dilemma of Confidentiality" by Rachel Kessler, The Passageways Institute)

3. How should confidentiality dilemmas be addressed & info shared appropriately?

A. Confidentiality and School Social Work: A Practice Perspective
(Practice update from the National Association of Social Workers)

B. Excerpts from: Confidentiality in the Treatment of Adolescents
(Stephen H. Behnke, JD, Ph.D. & Elizabeth Warner, PsyD, APA Monitor, Volume 33, No. 3, March 2002.)

C. The Confidentiality Dilemma
(Excerpt from: "Reframing the confidentiality dilemma to work in children's best interests" by L. Taylor & H. Adelman. Published in *Professional Psychology: Research and Practice*, v. 20, pp. 79-83, 1989. Also excerpted in the Center Introductory Packet on "Confidentiality and Informed Consent.")

Excerpted from the North Central Regional Educational Laboratory
(http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs3lk2.htm)

Reasons for Protecting the Privacy of Children and Families

When determining eligibility for certain services and providing needed and appropriate resources, human service agencies and education institutions often require that children and families share very private information about themselves. Laws and statutes are in place to protect the privacy of these individuals and to ensure that this information is released only when necessary. Soler and Peters (1993) outline several reasons for protecting the privacy of children and families:

- "Confidentiality restrictions *protect embarrassing personal information from disclosure*. This information may include histories of emotional instability, marital conflicts, medical problems, physical or sexual abuse, alcoholism, drug use, limited education, or erratic employment.

- Confidentiality provisions also *prevent the improper dissemination of information about children and families that might increase the likelihood of discrimination against them.* Such information--about HIV status, mental health history, use of illegal drugs, or charges of child abuse--can be harmful if released. Harm can occur even if records show that the information is unproven or inaccurate.

- Protecting confidential information can be necessary to *protect personal security*. For example, in a domestic violence situation, an abused woman who leaves home may be in great danger if law enforcement personnel disclose her new location.

- Confidentiality provisions also *protect family security*. Many immigrant families, for example, shy away from using public health clinics or other social services for fear that the Immigration and Naturalization Service (INS) will take action against them.

- Restricting the information that human service agencies receive may also *protect job security*. Some information--such as a history of mental health treatment--may have no connection with a person's actual job performance but could jeopardize the individual's position, likelihood of promotion, or ability to find new positions.

- Children and families also want to *avoid prejudice or differential treatment* by people such as teachers, school administrators, and service providers. Teachers may lower their expectations for the children they know are eligible for food stamps or free school lunches. This may set in motion a self-fulfilling prophecy in which lowered expectations lead to lowered performance.

- Confidentiality provisions also may be necessary to *encourage individuals to make use of services designed to help them.* Adolescents may avoid seeking mental health services at a school-based clinic, for example, if they believe that information will get back to their teachers, parents, or peers. The same holds for birth control or HIV-related medical consultations." (pp. 6-7)

McWhinney, Haskins-Herkenham, and Hare (1992) note that confidentiality provisions actually promote the participation of families in seeking and receiving services:

> "Assurance of confidentiality is important because it enables people to seek help without fear of such results as stigma, retaliation, disapproval, or damage to other relationships. Confidentiality encourages both full disclosure, which is essential for effective treatment, and the maintenance of trust, the means by which treatment is effected." (p. 1).

Understanding Confidentiality. Excerpted from: *Confidentiality-Protocol for Handling Issues of Confidentiality in Public Schools*

Prepared by The Manitoba Teachers' Society
http://www.mbteach.org/confidentiality.htm

Note: While the following was prepared for schools in Manitoba, Canada, most of the points are relevant to all schools.

Article 1. Understanding confidentiality:
Confidentiality is the obligation not to disclose willingly any information obtained in confidence. Therefore, information disclosed in response to a search warrant, a subpoena or a legal requirement for mandatory reporting is not a breach of confidentiality.

Child protection:

- The teacher who has reason to believe that a child is or might be in need of protection shall forthwith report the information to the appropriate authorities in accordance with legal obligations pursuant to child protection legislation.

Potential harm:

- If the behaviour of the student threatens potential harm to him/herself or another person, the teacher shall take appropriate action to protect the student and/or the other person.

Legal action:

- The teacher may be required by the courts to provide records and relevant information regarding a student.

Basic principles:
Confidentiality is based on four basic principles:

1. Respect for an individual's right to privacy.
2. Respect for human relationships in which personal information is shared.
3. Appreciation of the importance of confidentiality to both individuals and society.
4. Expectations that those who pledge to safeguard confidential information will do so.

Confidential information in its broadest form is any information given in confidence to a teacher. Confidential information may include, but is not restricted to, disclosures of physical, mental or emotional abuse; family problems; substance abuse; criminal behaviour; sexual activity; or suicidal thinking.

A teacher respects the confidential nature of information concerning students and may give the information only to authorized personnel or agencies directly concerned with the students' welfare.

Article 2. Protecting confidentiality
Confidentiality is very important to establishing and maintaining a strong teacher-student relationship. It is important that teachers are aware of the rights of individuals to privacy and to respect the confidential nature of information concerning students. A teacher, however, may consult and collaborate with other professionals for purposes of more effectively helping the student.

Some guidelines for protecting confidentiality are:

1. A teacher shall consult with the student and attempt to obtain the consent of the student before divulging confidential information.
2. A teacher may consult and collaborate with other professionals for purposes of more effectively helping the student. The teacher shall share only such information that will serve the student's best interests, and divulge the student's name only when necessary.
3. A teacher shall share information verbally with other professional colleagues rather than giving them copies of notes and ensure that colleagues respect the confidential nature of the information being shared.
4. A teacher shall take care, when sharing information about students that the information is accurate and unbiased.
5. A teacher shall guard against sharing confidential information in halls, staff rooms or other public places where persons who do not need to know can overhear it.
6. A teacher shall not leave reports, student service records, computer files or log books where unauthorized people can have access to them.
7. A teacher who is in doubt as to the reasonableness of a course of action regarding the sharing of confidential information should consult the school counsellor or school administrator before making a decision.

Article 3. Record keeping
A teacher shall keep accurate and objective records to facilitate the provision of services to students. Failure to keep records is negligence. There are no risks to having good records—well-organized, well-written, comprehensive notes will establish the teacher as a competent, caring professional.

Personal records are kept by a teacher to refresh his/her memory and to document important information regarding students for use in consultation, referrals, case conferences and court proceedings. A teacher should record enough information to meet students' needs and to demonstrate effectively that she or he has acted in an appropriate and professional manner.

Notes should be made as immediately as possible to the time of the event(s), and the original notes should never be changed. Any additions should be initialled, signed and dated.

A teacher shall make the student aware that confidential information is being recorded, share such information with the student, clarify the information and inform the student of the possible need to report such information for legal or professional purposes

Article 4. Maintaining records
Schools/school divisions should develop policies and procedures for the maintenance of records, including in such policies provisions for:

- Physical security of records
- Access to records
- Periods of maintenance for different types of records
- Destruction of records.
- Teachers must take care that their personal records are kept in secure locations.

Article 5. Requests for information
Schools should develop procedures to ensure that the confidentiality of material is maintained when it is being received or sent by the school. A teacher must keep the best interests of the student in mind when making decisions to divulge confidential information. A teacher shall consult with the student and attempt to obtain the consent of the student before divulging confidential information to authorized personnel or agencies directly concerned with the student's welfare.

The teacher should be aware of the legalities regarding the sharing of information with parents/guardians. The (Manitoba Public Schools) Act states, in part, that: Every school board shall...

...determine the times when and the manner in which reports and other information respecting pupils shall be delivered or provided or made available by teachers;

...set out the procedures for the collection, storage, retreival, and use of information respecting pupil files.

The school/school division should develop policies and procedures for the sharing of information regarding court orders or other legal restrictions on the sharing of information about a student.

Teachers should be aware of all court orders regarding custody of students in their care, and any policies regarding the rights of non-custodial parents to information and access to a child. If non-custodial parents or other individuals involved with the student request information or access, a teacher should refer questions or concerns to the school administrator.

No information should be given without a documented request.

Schools should develop procedures to ensure that the confidentiality of material is maintained when it is being received or sent by the school. Particular care should be taken when giving information by phone or by fax.

Article 6. Legal proceedings

A teacher must never destroy records of confidential information.

Records that may be required in court proceedings should be maintained indefinitely, both to assist the student and to prove that the teacher acted responsibly.

The teacher should be aware of divisional policies regarding sharing of information with legal authorities. Information should not be given without a subpoena or a court order (e.g. search warrant).

There is no inherent right of a probation officer or the police to confidential information unless they have a search warrant. If police are executing a search warrant in the school, teachers should cooperate and immediately inform the administration. If a teacher receives a subpoena requesting records, the teacher should inform administration and seek legal advice as soon as possible. The teacher should not automatically turn over records because the subpoena may be challenged as not serving the best interests of the student. The teacher should be aware that keeping records secret or storing them out of the school does not protect them from a subpoena which usually asks for all records kept under all circumstances in any location.

It is important to be aware that the law holds us responsible for our decisions. The defense of "following regulations or policies" does not alleviate a teacher's accountability in making appropriate decisions about a student.

Article 7. So what if you don't agree?

Teachers have a professional obligation to protect confidences. They also have the obligation to act in a professional manner in their interactions with students, and with their peers.

School Divisions should develop procedures whereby a teacher can comply with this protocol without breach of confidentiality, or refuse to provide the information without being subject to disciplinary action by the division. A conflict may arise when there is a demand by the police or school administration to have confidential information released with which a teacher is reluctant to comply because doing so would violate this protocol. The teacher should immediately seek advice from appropriate sources.

When in doubt, the teacher should:

remember that confidentiality resides with the student
advise administration
request help
know the pertinent laws and regulations
be accountable for decisions regarding students
above all, act professionally

About the Limits of Confidentiality and It's Limitations on Helping

(Excerpts from Taylor, L. & Adelman, H. (1989). Reframing the confidentiality dilemma to work in children's best interests. Professional Psychology; Research and Practice, 20, 79-83)

Confidentiality is an ethical concern. The fundamental intent is to protect a client's right to privacy by ensuring that matters disclosed to a professional not be relayed to others without the informed consent of the client. In discussing confidentiality, therapists also hope to encourage communication.

Neither privacy nor confidentiality, however, are absolute rights, especially in the case of minors. There are fundamental exceptions, some involving ethical considerations and some involving legalities.

Privileged communication is a legal concept. It addresses legal rights protecting clients from having their disclosures to certain professionals revealed during legal proceedings without their informed consent. For example, 20 states fully or partly protect communications between school counselors and their pupil clients (Sheeley & Herlihy, 1987). Legal determinations regarding who is the client (e.g., whether minors or their parents hold the "privilege") and limitations on clients' rights to privileged communication are the bases for legal exceptions to maintaining confidentiality.

There are times when professionals would prefer to maintain confidences but cannot do so legally or ethically. Examples include instances when clients indicate an intention to harm themselves or someone else and when they have been abused. As a result of legislation, litigation, and ethical deliberations, professional guidelines call on interveners to breach the confidence and tell appropriate public authorities when there is a "clear danger to the person or to others" (American Psychological Association, 1981, p.636). In this vein, but perhaps going a step further, the ethical guidelines for school counselors call for reporting instances when information provided by clients indicates circumstances likely to have a negative effect on others; that is, without revealing the identity of the client, the counselor is expected to report such circumstances "to the appropriate responsible authority" (American Association for Counseling and Development, 1981, p. 4). However , it is left to individual counselors to decide which circumstances are "likely" and what constitutes a "negative effect" that is serious enough to require reporting.

In order to adequately inform minors of exceptions to the promise of privacy, therapists must add a statement about exceptions, such as this:

> Although most of what we talk about is private, there are three kinds of problems you might tell me about that we would have to talk about with other people. If I find out that someone has been seriously hurting or abusing you, I would have to tell the police about it. If you tell me you have made plan to seriously hurt yourself, I would have to let your parents know. If you tell me you have made a plan to seriously hurt someone else, I would have to warn that person. I would not be able to keep these problems

> just between you and me because the law says I can't. Do you understand that it's OK to talk about most things here but that these are three things we must talk about with other people?

Because youngsters may feel , a bit overwhelmed about the exceptions to privacy and the serious problems described, they may simply nod their acquiescence or indicate that they are unsure about how to respond. To soften the impact, therapists may add statements, such as this:

> Fortunately, most of what we talk over is private. If you want to talk about any of the three problems that must be shared with others, we'll also talk about the best way for us to talk about the problem with others. I want to be sure I'm doing the best I can to help you.

States vary in the degree to which their laws specify limitations on privileged communication between counseling professionals and minor clients. Some protect only disclosures about problems related to alcohol and other drugs. Others give broad protection, specifying a few exceptions such as reporting child abuse and crime or potential criminal activity. As far as professional psychology is concerned, however, the bottom line is that , "a gradual and continuous weakening has occurred in the confidentiality privilege" (Everting et al., 1980, p.836).

Undoubtedly, breaking confidentiality in any case can interfere with the trust between client and professional and make it difficult to help the client. Prevailing standards, however, stress that this concern is outweighed by the responsibility of the intervener to prevent various threats. In particular, matters such as suicide and assault on others (including physical and sexual abuse), which initially were defined as legal exceptions to privileged communications, have become established limits on confidentiality. As a result, the ethical task of informing prospective clients about all the exceptions and limits related to confidentiality has made the processes of ensuring privacy and building trust almost paradoxical.

Existing limits on confidentiality clearly reflect circumstances in which the society sees its interests as paramount and requires counselors to disclose, what they learn even though the interveners believe it may hinder their efforts to help the client. The issues related to such limits are complex, controversial, and beyond the scope of this article. For our purposes, we can simply acknowledge that society always is likely to impose some limitations on privileged communication and that counselors always will find such limits troublesome.

Confidentiality as a Limitation on Helping

Concerns about protecting a client's right to privacy and exceptions to this right have been discussed thoroughly in the literature. Less attention has been paid to the fact that there are times when keeping information confidential can seriously hamper an intervener's efforts to help a client. The complexity of the ethical issues need not concern us here. We can simply take it as axiomatic that there will be times when interveners find it in the best interest of a minor client for others to know something that he or she has disclosed.

In its ethical guidelines on confidentiality, the American Psychological Association recognizes that there are instances when information obtained in clinical or counseling relationships should be shared with others. In doing so, the guidelines stress that such sharing should occur "only with

persons clearly concerned with the case" (APA, 1981, p. 636). Given that teachers and parents are clearly connected and see themselves as also working in a minor's best interests, some interveners feel it appropriate-even essential-to discuss information with them. In other words, there are times when an intervener sees keeping a specific confidence shared by a minor client as working against the youngster's best interests and will evaluate the costs of not communicating the information to others as outweighing the potential benefits of maintaining the minor's privacy.

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Limits to Confidentiality for Teachers and Students.

Excerpted from: *Guidelines: The Dilemma of Confidentiality*, by Rachael Kessler, The PassageWays Institute (http://www.mediatorsfoundation.org/isel/confident.html)

LIMITS TO CONFIDENTIALITY FOR THE TEACHER

As teachers, we have always communicated the limits to our own confidentiality.

- Suicide threats or ideation,
- child abuse,
- drug/alcohol use on campus

They all require immediate reporting of situation to an administrator followed by an appropriate referral. These are mandated by state law or school policy. In addition, we tell them that if we feel concerned for their health or well-being, we may feel compelled by our own personal caring to share our concerns with a dean. In both cases, we assure students that if at all possible, we would speak to them first and include them in the process of choosing the appropriate administrator and include them in the visit. However, if we cannot reach the student and there is immediate cause for concern, we must break confidentiality and make our report.

The procedure and policies regarding limits to teacher confidentiality have not changed. But what has changed over the years of experience is our approach to student confidentiality.

LIMITS TO CONFIDENTIALITY FOR THE STUDENT

We realized that for adolescents it is not always appropriate to expect. It is often difficult at this age to contain emotionally loaded information. I begin the process with my students by asking them why they think people tell other people's private thoughts and feelings. We then engage in a dialogue, which helps them become conscious, and therefore less likely to indulge in some of the negative reasons for violating confidentiality. We also explore the legitimate reasons why people feel compelled to tell anothers' story.

One of the first things students mention is gossip. I ask them why they think people gossip. They acknowledge the power and popularity it can bring. I suggest that we could agree here not to use other people's stories in this way and they nod their heads. What else? They talk about thoughtlessly blurting out something private because it is interesting or exciting to them. This too, an impulsive and unconscious violation of the privacy of others, we agree is something we will do our best to control.

Then we move into some of the more legitimate concerns that can lead any of us to tell the story of another. We may break confidentiality out of a genuine need to take care of ourselves -- someone else's private disclosure may stir a deep emotional response or concern in the listener

which cannot and should not be kept to oneself. At such times, there is a conflict between the need to take care of the other (maintain confidentiality to protect their privacy) the need to take care of oneself (to share and get support or clarification for feelings that arise in response to another's sharing). This is an important part of being human and searching for integrity. We need to explain this to our students and brainstorm ways to resolve this conflict in ways that minimize hurt to both sides.

For the speaker:
Since confidentiality can't be guaranteed, take care of yourself and only share what you are comfortable sharing. Once you put it out, you can't predict what will happen to it. So be conscious of that when you speak; be discriminating about what you share and when, knowing that it may get out beyond the group.

For the listener:
If you feel the need to share something that was spoken by someone in class, ask yourself why you are doing so and how you can do it in a way that takes care of your need while not hurting your classmate. Be sure you don't just blurt it out without thinking or because it seems thrilling to you. If, on the other hand, it is really upsetting to you and you need to talk to someone about it, whom can you talk to?

We brainstorm together on this dilemma. Students suggest people they could talk to who would be least likely to violate the privacy of their classmate. Suggestions include: talk to the person who actually spoke about it, talk to your teacher, bring it up in the next class if you can wait a week, talk to your parents, talk to a friend or relative who lives outside this community. As suggestions are made, we often ask students how they would feel about something they said being repeated to a person in the category suggested. I find that students continue to insist that they can be absolutely confidential and that they want others to "swear to secrecy," but this discussion helps them to appreciate in a realistic and compassionate way that someone may need to break confidentiality. It helps them be more aware about what they share and hopefully, to be better able to forgive if there is a breech of confidentiality.

Parents' concerns about confidentiality. Some individual parents, as well as organized parent groups today, are deeply suspicious of programs that encourage students to tell personal stories or share feelings. One such program was attacked precisely because confidentiality was encouraged. As teachers and trainers, we must be sensitive to, and accountable to parents needs and beliefs in this arena. It is always important to dialogue early with parents when programs that deal with emotions are initiated. We can convey that we are not encouraging their children to tell their own or family secrets or probe into private matters. When we encourage students to honor the privacy of others, we are teaching children to respect boundaries -- their own and those of others. Boundaries are weak and unclear for many adolescents, especially during the middle school years, and strengthening boundaries is an essential part of developing a healthy identity. Giving parents a chance to express their concerns, questions and suggestions about the content and strategies of our work is an important part of the collaborative process of designing a social and emotional learning program that has integrity and consistency throughout the lives of the students who receive it.

NASW National Association of Social Workers

The Power of Social Work

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Practice Update from the National Association of Social Workers

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Confidentiality and School Social Work: A Practice Perspective

INTRODUCTION

Within the school setting, school social workers are the link between the student, the student's family, the school, and the community. The efficacy of this link is considerably dependent upon professional relationships developed with the student and the student's family, as well as with other school personnel. There is also a significant relatedness between the efficacy of the link and the "sharing of information" between the student and the school social worker and between the school social worker and others equally concerned with the student's education and emotional and mental well-being. In essence, school social workers cannot properly and effectively serve students in isolation or without some level of reliance on other professionals. However, given the unique nature of school social work services, a dilemma often exists for many school social workers in determining what information needs to be shared, with whom the information needs to be shared, when, and what information should be held in confidence. These practical considerations are often complicated by legal and ethical considerations, which vary by state.

CONFIDENTIALITY: A PRACTICE PERSPECTIVE

"[School] social workers recognize the central importance of human relationships" . . . "[School] social workers behave in a trustworthy manner" (NASW, 1996, p. 6). These are two of six ethical principles summarized in the NASW *Code of Ethics*.

Confidentiality at School

—Confidentiality is fundamental to relationships with all "clients" (Kopels & Kagle, 1994).

—Confidentiality, as it relates to the practice of school social work, is extremely complex (NASW, 1991).

—The school serves in loco parentis and shares with the parents legal responsibility for the student's education (NASW, 1991).

—School social workers' ability to protect student confidence is limited by state laws or regulations and ethics (Kopels & Kagle, 1994).

—Lack of preplanning regarding confidential information can result in misunderstandings about the sharing of information (Jonson-Reid, 2000).

—Protecting students is more important than protecting confidentiality (Kopels & Kagle, 1994).

School social workers understand the significance of developing professional and trusting relationships with the students and families they serve, as well as with collaborating partners and community resources. Most interventions undertaken by school social workers with students occur on an individual basis, within a group setting, or at home in the family setting. Regardless of the setting, however, "the goal of intervention is still primarily relationship building, not merely information gathering" (Kardon, 1993, p.249). The ultimate goal of school social work services is to promote academic and social–emotional success for students to make them fully available for learning. Ideally, a student (and the student's family) who benefits from a successful relationship with the school social worker will generalize such to the student–teacher relationship, thereby enhancing educational opportunities in the classroom setting (Kardon, 1993).

In the course of developing relationships with students and their families, confidential information (about the student or the student's family) is often communicated. It becomes necessary for the school social worker to decipher the (confidential) information that is relevant to the educational needs of the student. This critical process should not just evaluate information specific to academics, but should also include information that affects the social–emotional and mental well-being of the student. If the information revealed has no relevance to the academic success or social–emotional development of the student—that is, has no effect on learning—then the school social worker should evaluate the purpose, if any, of disclosing such information to others. The crux of the dilemma for school social workers lies in the finding that the (confidential) information learned has educational relevance or significance—that is, an effect on learning.

LIMITS OF CONFIDENTIALITY

Confidentiality is a critical element in developing and maintaining trusting relationships with students. However, "(school) social workers must accept that they cannot offer their (students) absolute confidentiality" (Kopels & Kagle, 1994 p.1). It is imperative that this message be communicated to students (and their families) at the "onset" of services, because there will undoubtedly be instances when confidential information needs to be shared with other school personnel and/or collateral or corroborating agencies. For example, in every state, school social workers are mandated to report suspicions of child abuse and neglect to their local child protection agency or the police, even when such information is learned in confidence. Also, if students disclose intent or plans to harm others, this information must be disclosed. Unfortunately, whether to disclose some other information may not be as apparent to some school social workers and/or may be clouded by (state) law and ethics, or the lack thereof. In instances such as this, it is critical that school social workers be familiar with the legal rights of minors (in their state) with respect to confidentiality. The minor's legal rights will have implications for what information can and cannot be shared with others. To the extent that it is possible and feasible, school social workers should involve the student and the student's family in decisions to breach confidentiality. There will invariably be instances when school social workers will need to make decisions about whether to disclose confidential information when law to do so does not mandate them. The following practice implications may be helpful in such situations.

PRACTICE IMPLICATIONS

School social workers, as agents of the school system and members of the educational "team," have professional obligations that reach beyond the student and the student's family. To be effective in serving and meeting both the educational and social–emotional needs of the student, information must be shared and exchanged. First and foremost, the sharing of confidential information should always "be done in a manner that preserves the dignity of the [student] and the integrity of the [school] social worker–student relationship" (Kardon, 1993, p.249). The following are practical steps, suggestions, and questions to consider in evaluating the need to share confidential information regarding students.

- Be proactive . . . become familiar with state laws and regulations and school district policies governing confidentiality and minors, before this information is needed.
- Become familiar with laws and regulations governing confidentiality and minors as they pertain to other school personnel (that is, school counselors, school psychologists, and school nurses). In some states, these regulations differ from those governing school social workers.
- Develop and use written guidelines for sharing confidential information with third parties.
- Develop and use written consent forms for all parties involved with students when sharing confidential information.
- Maintain written documentation indicating with whom confidential information has been shared.
- When sharing confidential information, know what information can and cannot or should or should not be shared.
- Ask the following questions when deciding to share confidential information: "Why is it important that this information be shared?" "How will the student and the student's family benefit by a decision to share or not share information?" "Does sharing the confidential information outweigh maintaining confidentiality?" "What will be the effect on the student's learning?"
- Seek direction on this issue in a wider context through professional development opportunities or in-service training for a school or school district.
- Discuss limits of confidentiality with student and student's family at the onset of services.
- When possible or appropriate, discuss breaches of confidentiality with the student and the student's family in a timely manner.
- Become familiar with limits of confidentiality and "information sharing" as they pertain to IDEA.
- When preparing social histories for students who receive special education services under IDEA, include a statement indicating that the information reported is confidential.

LEGAL AND ETHICAL ISSUES

The school setting has been described as "one of the most problematic settings for social workers to work in and maintain 'client' confidentiality" (Kopels, 1993, p. 251). This is, in large part, due to the student's age and the legal and ethical issues governing confidentiality and minors. In matters of confidentiality, law and ethics reinforce each other. Law ensures that the client's rights are guaranteed against those who do not act from ethical motives; ethics

guarantees that the institutional conscience will transcend law and attend to obligations, whether guaranteed by law or not (NASW, 1991). School social workers, as do social workers in other practice settings, have a professional obligation to respect the privacy of their clients (NASW, 1996).

This practice update recognizes the significance of law and ethics as they pertain to confidentiality of minors. However, this update is not intended as a tool to inform the reader on the legal and ethical implications involved here. Rather, it is the intent of the update to inform school social workers on practical (practice) considerations regarding confidentiality in their work with students and students' families. For a more detailed analysis of the ethical and legal issues governing school social workers, refer to the NASW position statement on "school social workers and confidentiality" (NASW, 1991).

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Excerpts from...

Confidentiality in the treatment of adolescents

(APA Monitor Volume 33, No. 3 March 2002)

BY STEPHEN H. BEHNKE, JD, PHD, AND
ELIZABETH WARNER, PSYD

Q: *I work with adolescents, and am not clear about my ethical obligations concerning confidentiality. When treating young children, the issue rarely arises. With adolescents, though, I sometimes struggle with whether to share information with a parent. The issue seems especially pointed when adolescents talk about activities that, while not necessarily dangerous, are illegal, such as shoplifting, the recreational use of alcohol or experimenting with drugs. What to do when an adolescent becomes sexually active, of course, is often a difficult issue. Does the APA Ethics Code provide guidance?*

A: It is most helpful to consider this question from three perspectives: that of law, of clinical practice and of ethics.

The law. The law is a blunt instrument, as the issue of minors and confidentiality well illustrates. Minors generally cannot consent to treatment; a parent or guardian consents on the minor's behalf. There are exceptions. Certain states allow minors whom the law deems especially mature, such as those who are married or in the armed services, to consent to treatment, and sometimes minors may consent to treatment for substance abuse or sexually transmitted diseases. The exceptions are few, however, and prove the rule that the law deems individuals under a certain age (often 18) not sufficiently mature to make treatment decisions.

A parent who consents on the minor's behalf generally has the right to know the content of the child's treatment. This state of affairs changes when the minor reaches the age of majority. Until that time, the law will normally give the parent access to the child's treatment.

Clinical practice. From a clinical perspective, the situation is more complex. An important aspect of treatment is to foster an individual's autonomy, and a great pleasure of treating adolescents is to watch as they come to enjoy their growing independence. One aspect of independence is privacy. As a child grows into adolescence and adulthood, the surrounding zone of privacy should increase, thus making room for a more defined sense of self and a greater sense of autonomy. A paradox thus arises: Good clinical treatment may require what the law generally refuses, that is, a zone of privacy.

Ethics. Can our Ethics Code ease the apparent tension between law and clinical practice?

Standard 4.01, "Structuring the Relationship," states that "Psychologists discuss with clients or patients as early as is feasible in the therapeutic relationship...the nature...of therapy, fees, and confidentiality." Standard 4.02, "Informed Consent to Therapy," states that when an individual cannot provide informed consent (such as a minor), psychologists "consider such person's preferences and best interests." Standard 4.03, "Couple and Family Relationships," states that psychologists "attempt to clarify at the outset (1) which of the individuals are patients or clients and (2) the relationship the psychologist will have to each person."

Three points emerge. First, early in the relationship the psychologist should make clear what relationship she will have to each of the parties. Second, central to that early discussion should be an explanation of how information-sharing will work--what information will be shared, with whom and when, in a manner appropriate to the child's age and understanding. Third, as the child develops, the structure of the therapy may change for clinical reasons. Thus, the changing clinical picture will have ethical implications. The child's greater sense of self and enhanced capacity for autonomy may require greater respect for the child's need for privacy. The psychologist will thus need to revisit earlier discussions and explain that, for clinical reasons, the structure of the therapy should change. Such boundary renegotiation, while complex with certain adolescents and families, is clinically and ethically indicated....

Second, clinical judgment will indicate to what extent maintaining an adolescent's privacy is central to the treatment. It may be, for example, that an adolescent has conflicting wishes about keeping information private. A psychologist may conclude that an adolescent's wish not to have information shared reflects an appropriate separation and so should be honored. Or, a psychologist may conclude that sharing certain information would be helpful; if so, the ethical standards from the section on "Privacy and Confidentiality" give the psychologist permission to do so.

Third, few things carry such potential to disrupt a treatment as an adolescent's feeling that information was shared without his or her knowledge. Regardless of whether an adolescent assents to have information disclosed to a parent, it makes both clinical and ethical sense to tell the adolescent--beforehand, if possible--what information will be shared, and when. Ideally, the adolescent would be part of such conversations.

Fourth, at times a psychologist will be mandated to disclose information. Serious threats of harm must be disclosed in many states. Neglect or abuse falls under mandatory reporting laws. The extent to which the psychologist explains the limitations on confidentiality will depend on the child's age and maturity. Certainly, however, adolescents should be told that serious threats of harm to self or others will not be kept confidential.

Fifth, many of the activities adolescents engage in do not rise to the level of reportable behavior. Nevertheless, some are on the edge and require judgment calls. For this reason, psychologists who treat adolescents will want to have a good working knowledge of mandatory reporting requirements and to be liberal in their use of consultation.

Finally, a psychologist may feel strongly that revealing information to a parent could harm the patient or be destructive to the treatment. A refusal to disclose in such a case, even in the face of a parent's request, may be legally supportable. A psychologist in this position should seek both legal counsel and consultation from colleagues....

A Brief Discussion of:

THE CONFIDENTIALITY DILEMMA

(For a more extensive discussion or this topic see L. Taylor & H. Adelman (1989). Reframing the confidentiality dilemma to work in children's best interests, *Professional Psychology: Research and Practice, 20,* 79-83*)*

We all value client confidentiality. At the same time, we are aware of the legal responsibility to report endangering and illegal acts. Such reporting requirements naturally raise concerns about the negative impact on the counseling relationship.

In reaction to what they see as an erosion or confidentiality, some interveners communicate only what the law compels. Others are so overwhelmed by reporting requirements that they turn the concept of confidentiality inside out. For example, a drug counselor recently stated:

> *"I explained confidentiality that if he told me anything about the possibility of hurting himself or anyone else or about taking an illegal substance I would have to tell others, including his parents and the authorities".*

Concern for reporting so dominated him that concerns about protecting privacy and establishing trust were not addressed.

Clearly, there is a dilemma. On the one hand, an intervener must avoid undermining confidentiality and privileged communication; on the other hand, s/he must give appropriate information to others who share concern and responsibility for a minor's welfare. It is tempting to resolve the dilemma by reasserting that all counseling information should be confidential and privileged. Such a position, however, ignores the fact that failure to share germane information can seriously hamper efforts to help the client.

In working with minors, concerns about the limits on confidentiality may be best approached by reframing the problem and focusing on how to facilitate *appropriate* sharing of information. From this perspective, we have come to focus less on how to avoid breaching confidences and more on how to establish the type or working relationship where young clients take the lead in sharing information when appropriate. To these ends, we stress processes to enhance client motivation and empower them to share information when it can help solve their problems. In addition, steps are taken to minimize the negative consequences of divulging confidences.

Enhancing Motivation for Sharing

Informing clients about reporting requirements can compound negative attitudes toward intervention. Thus, there may be a need for systematic efforts to enhance motivation to participate. The problem, of course, is a bit paradoxical: that is, how to elicit sufficient participation to allow the counselor to demonstrate that participation is worthwhile.

One strategy involves demonstrating to the client intrinsic payoffs for taking the risk of disclosing

personal thoughts and feelings. We start with the assumption, born of experience, that first contacts allow sufficient access to encourage attendance for a couple of sessions. That is, we know that skilled therapists use a range of nonthreatening activities to help establish enough rapport that most youngsters are willing to return at least for a second session. The following ideas for enhancing motivational readiness build on this initial rapport.

Available theory and research suggest the place to begin enhancing motivational readiness to disclose is to find any area in which the client expresses a personal interest. These include areas of strength, success, or problems, reactions to being referred, and so forth. Sometimes the area is clear. For instance, some young clients, perhaps in an effort to feel more in control of the situation, lead the intervener away from the referral problem to talk about some other matter. In such cases, initially we follow their lead. Almost inevitably, once they start talking about their lives, they share some complaint or problem. Some act surprised about being referred. In these cases, we begin by sharing in a nonjudgmental way the concerns expressed by parents or teachers and then try to mobilize clients to share their perspectives (often they are very motivated to rebut what others have said). We find many who respond best initially to the structure or a question and answer format that explores areas of personal concern (e.g., instruments such as the Children's Depression Inventory). Structured interviews provide a useful framework to identify openly an area of concern that can be discussed to some extent.

By identifying a problem the client expresses a personal desire to resolve and probably can resolve with some help, the intervener then is in a position to validate feelings and encourage exploration of cause and correction. For example,

> *"You feel like your teacher doesn't listen and treats you unfairly. I'll bet if we thought a bit about it, we could come up with some ways to make things better for you. Tell me what you've tried or would like to try, and then we'll figure out what to do."*

Once a mutual objective is established, the focus shifts to strategies for maintaining the client's motivation in working toward a solution. This, of course, involves ensuring that the client experiences a sense of satisfaction related to working with the therapist. From a motivational perspective, such satisfaction results from the type of (a) options and choices that enhance feelings of self-determination (e.g., perceived control) and (b) support, guidance, skill development, and feedback that enhance feelings of competence (e.g., self-efficacy).

Several problems may have to be worked through before a young client will disclose something perceived as risky. Hopefully, when the risk is taken, the matter is one that can be kept private. Whenever a matter is raised that must be shared, we suggest use of strategies that empower clients to take the lead in sharing the information with others.

Empowering Clients to Share Information

Empowerment of clients can be viewed as a defining characteristic and a primary aim of a helping relationship. That is, a fundamental concern of an intervener in offering a helping relationship is to act in the *best interests of the client, as defined by the client,* through an informed agreement about ongoing client participation in decision making about means and ends. The ultimate intent is to empower clients so they can independently pursue their best interests. To accomplish this, intervention focuses on enhancing a client's motivation and skills for autonomous functioning.

In contrast, socialization interventions give primary consideration to the *society's best interests*. Individual consent and decision making are not necessarily sought, and empowerment of the individual is pursued only if it is consonant with the socialization agenda. Fortunately, individual and societal interests often are in harmony. However, instances where confidentiality is limited by law are indicative of circumstances where individual and societal interests conflict and where society's interests predominate.

All of this has direct implications for the problem of divulging information when the intervener views this as in the client's best interests. In a helping process, the first responsibility of the intervener is to determine whether the client agrees that information should be shared. If the client doesn't agree, the intervener must be prepared to help the client explore (in a developmentally appropriate way) the costs and benefits involved. This may take some time, especially since the point is not to convince or seduce but to facilitate comprehension (e.g., understanding of the positive impact sharing can have on relations with significant others). In the end, the individual still may not agree, and the ethics of the situation may dictate that the intervener break confidentiality without consent.

If the client sees it in his or her interest to have others informed of certain matters, then discussion shifts to how this will be accomplished. Again, in keeping with a commitment to empowering the client, the client should be in control of what information is shared, and, if feasible, should be the one who does the sharing.

Ideally, helping and socialization come together as the counselor helps a client understand the value of relating positively to significant others (e.g., parents, teachers) with respect to sharing feelings, expressing needs, and working toward agreements.

Minimizing Negative Consequences of Disclosure

Whatever the benefits, divulging confidences can have costs (e.g., for the client and for others). Ethically and practically, the intervener must take steps to minimize these costs. For example, part of the problem may be reduced if, in explaining to the client the need for relating what has been learned, the client agrees that the case falls within the previously discussed limits on confidentiality, such as harm to self or others. The costs to the individual also may be reduced significantly in instances where it is feasible to share information without revealing the source's identity.

In general, when legal or ethical considerations compel an intervener to divulge confidences, three steps must be taken to minimize repercussions. Essentially, the steps involve (a) an explanation to the client of the reason for disclosure, (b) an exploration of the likely repercussions in and outside of the counseling situation, and (c) a discussion of how to proceed so that negative consequences are minimized and potential benefits maximized.

For example, in explaining reasons, one might begin with

> *"What you have shared today is very important. I know you're not ready to talk about this with your parents, but it is the kind of thing that I told you at the beginning that I am required to tell them."*

One might explore repercussions for the helping relationship by stating

> *"I know that if I do so you will be upset with me and it will be hard for you to trust me anymore. I feel caught in this situation. I'd like us to be able to work something out to make this all come out as good as we can make it".*

With respect to how to proceed, often it is feasible simply to encourage the client to take actions in keeping with his/her best interests or give consent to allow the counselor to do so.

> *"This may work best for you if you tell them -- rather than me. Or if you don't feel ready to handle this, we both could sit down with your parents while I tell them".*

Concluding Comments

Responsible professionals want to avoid both surrendering the confidentiality surrounding counseling relationships and overreacting to necessary limitations on confidences. In trying to combat encroachments on privileged communication, counselor's recognize that the assurance of confidentiality and legal privilege are meant to protect a client's privacy and help establish an atmosphere of safety and trust. At the same time, it is important to remember that such assurances are not meant to encourage young clients to avoid sharing important information with significant others. Such sharing often is essential to the client's personal growth. Indeed, it is by learning how to communicate with others about private and personal matters that clients can increase their sense of competence, personal control, and interpersonal relatedness, as well as their motivation and ability to solve problems.

II. Fact Sheets /Guidelines

A. Information Sharing & the Family Educational Rights & Privacy Act

(U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, July, 1996, OJJDP Fact Sheet #39)

B. Limits of Confidentiality

C. Guidelines for Protecting Confidential Student Health Information

(Excerpt from: American School Health Association, 2000).

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

OJJDP Office of Juvenile Justice and Delinquency Prevention

Shay Bilchik, Administrator

Fact Sheet #39 July 1996

Information Sharing and the Family Educational Rights and Privacy Act

by Ronald Laney

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has long been aware of the need to foster and encourage the sharing of relevant information about juvenile offenders among law enforcement, education, social service, child welfare, and health and mental health service providers.

Confidentiality of juvenile records and impediments to information sharing between child and family service agencies have become a substantial concern to law enforcement, education, social services, and other juvenile justice professionals. In an era of scarce resources and rising juvenile delinquency, it is critical that all agencies serving children and families maximize their ability to share information that enables them to coordinate and provide more effective services. A lack of information sharing results in wasted law enforcement effort, a failure to target appropriate offenders, and fragmentation and duplication of services as service providers must then formulate treatment plans from a limited perspective. Information sharing between service agencies provides a broader perspective and results in more comprehensive assessments for the development of effective service strategies.

Information Sharing With Schools

Schools are an indispensable partner when agencies within a jurisdiction come together to implement a juvenile justice plan. When juveniles violate the law, the juvenile justice system is likely to place youths back into school as a condition of probation.

Educators should know when—and the circumstances under which—alleged and adjudicated juvenile offenders are returned to campuses. Given this knowledge, educators can provide counseling and assistance to preadjudicated juveniles and contribute their expertise to the efforts of the juvenile justice system to effectively treat adjudicated offenders. Schools can also supply valuable information to juvenile justice agencies. For juveniles who have been adjudicated, schools can help supervising agencies better assess the rehabilitation process by tracking attendance, academic achievement, and inschool behavior. Under the Family Educational Rights and Privacy Act (FERPA), this information can be provided by court order, with consent, under certain State laws enacted before November 19, 1974, or under the law enforcement record exception.

Enacted in 1974, FERPA protects the privacy interests of students and parents through standards for recordkeeping designed to discourage abusive and unwarranted disclosure of a student's education records. FERPA provides parents access to education records and limits nonconsensual disclosure. Failure of an educational agency or institution to comply with FERPA can result in the loss of Federal funding.

Many State and local educational agencies and institutions have been overly restrictive in their interpretation of FERPA or in their information release policies. Educators frequently decide to err on the side of caution by establishing policies recognizing a generalized right to privacy with regard to all information on students. Unfortunately, both inaccurate interpretations and restrictive FERPA policies pose significant obstacles to meaningful information sharing between agencies.

The Improving America's Schools Act (IASA) of 1994 (Public Law 103–382) amended FERPA to promote active information sharing by educators. IASA permits educators to share information with juvenile justice system personnel on juveniles prior to adjudication pursuant to State statute.

OJJDP's review of the FERPA statute and the current U.S. Department of Education regulation (34 CFR Part 99) indicates that FERPA does not limit or restrict information sharing through interagency information sharing agreements between schools and other agencies with whom they share a common interest, provided the information sharing is consistent with FERPA. FERPA expressly allows educators to:

- Share information with juvenile justice agencies after obtaining prior consent from the juvenile's parent or guardian.
- Share information, without prior parental consent, under each of the following circumstances:
  - When the disclosure is made in compliance with a court order or lawfully issued subpoena.

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- If the educational agency is initiating legal action against the student or the student's parent and has made reasonable efforts to give prior notice.
- When information about disciplinary action taken against a student is being provided to other schools that have a significant interest in the behavior of the student.
- If the information is needed by a juvenile justice agency that is providing services to the student, prior to adjudication, as authorized by State law.
- When the record disclosed is a law enforcement record created and maintained by the law enforcement unit of the educational agency or institution.
- When the disclosure is in connection with an emergency and is necessary to protect the health or safety of the student or other individuals.

These rules allow schools—while complying with FERPA—to play a vital role in a community's efforts to identify at-risk and delinquent youth and provide services either prior to a child's becoming involved in serious and violent crime or following adjudication. As more and more jurisdictions seek to improve their juvenile justice systems through information sharing, the emphasis on neighborhood school participation in interagency information sharing agreements will increase. FERPA need not be a barrier to this progress toward proactive information sharing networks. In an ideal information sharing system, schools would provide and receive information and participate in the formulation of comprehensive intervention strategies for their students who are involved with the justice system.

OJJDP Information Sharing Initiatives

OJJDP's training and technical assistance programs stress the importance of interagency information sharing. The School Administrators for Effective Police, Prosecution, and Probation Operations Leading to Improved Children and Youth Services Program (SAFE Policy) is a week-long program directed at reducing juvenile violence in our schools. It stresses the importance of interagency agreements for information sharing and coordination of juvenile services. The Chief Executive Course is an intensive 1-day orientation for local executives of public and private agencies that emphasizes information sharing as a method for improving the juvenile justice system. The Serious Habitual Offender Comprehensive Action Program (SHOCAP) is presented as a module in the SAFE Policy and Chief Executive Training programs and is also available in a 40-hour course designed to assist a SHOCAP jurisdiction in developing its own unique interagency information sharing agreement. The course requires the participation of policy level officials from law enforcement, schools, juvenile detention and corrections, prosecution, and social services.

These courses have modules on laws and policies that impact information sharing and on techniques to maximize information sharing. Sample State legislation, consent policies, and judicial orders are also available to course participants.

OJJDP and the Department of Education are developing a guidebook (*FERPA: Schools and Interagency Communication for Delinquency Intervention and Prevention)* for educators and juvenile justice professionals interested in developing interagency information sharing agreements. The guidebook will provide clear guidance for allowable information sharing while maintaining State and local compliance with FERPA.

For more information concerning OJJDP's training and technical assistance programs, please contact Ronald Laney, Director of OJJDP's Missing and Exploited Children's Program, at 202–616–7323.

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Limits of Confidentiality

Duty to Warn

Court cases have held that when an individual indicates the intention of doing something harmful, dangerous, or criminal to self or others, it is the professional's duty to warn appropriate parties. This includes:

- The family of an individual who intends to harm her- or himself
- Others the individual actions may harm
- Appropriate authorities and emergency responders

Duty to Report Child Abuse and Dependent Adult/Elderly Abuse

Many states mandate reports to appropriate agencies and authorities whenever there is actual or suspected child abuse (e.g., physical, sexual, neglect, emotional and psychological abuse, unlawful sexual intercourse).

Many states also require reporting whenever there is actual or suspected abuse to dependent adults and the elderly.

Guidelines for Protecting Confidential Student Health Information

This is a brief document prepared by the National Task Force on Confidential Student Health Information and published in 2000. It was developed as a project of the American School Health Association in Collaboration with the National Association of School Nurses and the National Association of State School Nurse Consultants.

Section I of the document discusses ethical responsibilities and legal obligations.

Section II recommends 8 guidelines and discusses each in detail. The eight are:

I. Distinguish student health information from other types of school records.

II. Extend to school health records the same protections granted medical records by federal and state law.

III. Establish uniform standards for collecting and recording student health information.

IV. Establish district policies and standard procedures for protecting confidentiality during the creation, storage, transfer, and destruction of student health records.

V. Require written, informed consent from the parent and, when appropriate, the student, to release medical and psychiatric diagnoses to other school personnel.

VI. Limit the disclosure of confidential health information within the school to information necessary to benefit students' health or education.

VII. Establish policies and standard procedures for requesting needed health information from outside sources and for releasing confidential health information, with parental consent, to outside agencies and individuals.

VIII. Provide regular, periodic training for all new school staff, contracted service providers, substitute teachers, and school volunteers concerning the district's policies and procedures for protecting confidentiality.

*Published by the American School Health Association, 7263 State Route 43/PO Box 708, Kent, OH 442240.

III. Tools/Handouts

Here are some sample consent and release forms for use within schools and for exchange of information between agencies/institutions.

A. Consent to Exchange Confidential Information

(From the Center for Mental Health in Schools *Intro Packet on Confidentiality and Informed Consent.*)

B. Authorization to Release Information

(From the Longfellow Elementary School Interagency Project SMART Program)

C. Consent to Treatment and Release of Confidential Information

(From the Bluegrass Interagency Mobilization for Progress in Adolescent and Children's Treatment)

D. Sample Request of Non-Parent for Access to Education Record

(From the U.S. Department of Education, National Center for Education Statistics, *Prortecting the Privacy of Student Records.)*

E. Sample Request (of Parent) to Review an Education Record

(From the U.S. Department of Education, National Center for Education Statistics, *Prortecting the Privacy of Student Records)*

CHILDREN'S INTERAGENCY

CONSENT TO EXCHANGE CONFIDENTIAL INFORMATION
PLEASE TYPE/PRINT ALL INFORMATION

Child's Name_____ Birth Date_____

Mother's Maiden Name_____ Father's Name_____

Social Security No._____ Record No._____

I authorize_____
to exchange information with:

_____
Agency/Person/Organization

_____
Address

about information obtained during the course of my/my child's treatment/case/service plan for:

_____

The exchange of records authorized herein is required for the following purpose:

_____

Restriction: Release or transfer of the specified information to any person or agency not named herein is prohibited unless indicated below:

Such exchange shall be limited to the following specific types of information:_____
_____
_____

This consent is subject to revocation by the undersigned at any time except to the extent that action has been taken in reliance hereon, and If not earlier revoked, it shall terminate. without express revocation on:

_____
Date, Event, or Condition

I understand I am entitled to receive a copy of this consent.____ copy(ies) requested and received. I have read this consent carefully and have had all my questions answered.

Date_____ Witness_____

Signed_____ Signed_____
Parent, Gaurdian Conservator **Case Manager/County Representative**

Agency_____

-CONFIDENTIAL CLIENT INFORMATION-
SEE CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 5328 AND SECTION 10850. CIVIL CODE 34, 56 and 1798. 42 C.F.R. SECTION 2.34 AND 2.35. EDUCATION CODE 49075. HEALTH AND SAFETY CODE 1795.

LONGFELLOW ELEMENTARY SCHOOL
3610 Eucalyptus Avenue
Riverside, California 92507
Interagency Project SMART Program
Authorization to Release Information

Sample Form D
(English Version)

We have many services here at Longfellow
to help you and your family. To receive this help and to make sure that you get all the help you and your family needs we may need to share information. I,_____hereby authorize release of all records, documents and information on my son, my daughter, and/or my family which is or may come on file with the agencies here at Longfellow Elementary School/Project SMART.

The following agencies may or will provide the services:

- The Youth Service Center
- Mental Health Counselor
- Public Health Nurses
- Public Health Van
- Social Worker
- Psychologist
- State Evaluator
- GAIN Worker
- AFDC Eligibility Technicianr
- MediCal Technician
- Day Care
- The Family Advocate
- School personnel

I understand that the following information may be released to the above stated providers:

1. The full name and other identifying information regarding my child and our family.
2. Recommendations to other providers for further assistance.
3. Diagnostic and assessment information including psychological and psychiatric evaluations, medical histories, educational and social histories. These evaluations may include some or all family members.

The purpose of this disclosure shall be to facilitate service delivery to my child(ren) and my family. I further understand that the information generated or obtained by the project can be shared with the agencies or providers that are a part of this project.

I also understand that this Authorization for Release of Information will be in effect for the duration of services provided to my child(ren) and my family and will expire upon the termination of the services. I understand I can revoke this consent at any time and this consent shall be reviewed annually.

I certify that I have read and understood the consent of this form. **_____Yes, I agree to sign. _____No, I do not agree to consent. Please list all children attending Longfellow School.**

_____ _____
Parent or Guardian Name (Please Print) **Parent or Guardian Signature**

_____ _____ _____
Student's Name **Room #** **Authorized Project SMART Staff**

_____ _____ _____
Students Name **Room #** **Date**

_____ _____
Student's Name **Room #**

LONGFELLOW ELEMENTARY SCHOOL
3610 EUCALYPTUS AVENUE
RIVERSIDE, CALIFORNIA 92507

Sample Form D
(Spanish Version)

Programa del Proyecto SMART do Interagencias
Autorizacion Para dar Informacion

Tenemos muchos servicios aqui en la escuela Longfellow para ayudarle a usted y a su familia. Para recibir esta ayuda y para aseguramos de que reciba usted y su familia la ayuda necesaria, tal vez sea necesario compartir informacion. Yo_____, doy autorizacion de compartir-toda informacion del expediente, documentos, a informacion sabre mi hijo, mi hija, y/o mi familia que pueden estar en el archivo en las agencias aqui en la Escuela Longfellow y el Proyecto SMART.

Las siguientes agencias pueden o seran las agencias que daran los servicios:

- Centro do Servicio Juvenil
- La consejera de salud mental
- Las enfermeras do salud publica
- Camion de Salubridad
- La trabajadora social
- El Psicologo
- El evaluador del estado
- Trabajador de Gain
- Trabajadores do Eligibilidad de AFDC
- Trabaiador de MediCal
- Cuidado de ninos
- La Ayudante do Familias
- Personal do la escuela

Yo entiendo que la siguiente informacion puede ser compartida can las personas mencionadas arriba:

1. El nombre completo y otra informacion de identificacion sobre el nino o la familia.
2. Recomendaciones a otras agencias para recibir mas ayuda.
3. Informacion sabre examenes de Diagnostico y evaluacion del psicologo a psiquiatra, historia medica, y antecedente educativo y social. Esta informacion puede ser sabre toda o parte de la familia.

La razon par la cual se necesita toda esta informacion es para facilitar servicio a todos mis ninos o la familia. Yo entiendo que esta informacion sera unicamente usada para este proyecto y solo sera dada a las agencias que son parte de este proyecto.

Yo entiendo que esta Autorizacion do Informacion sera vigente durante el servicio dado a mis hijos y familia y expira al terminar los servicios. Yo entiendo que yo puedo revocar este consentimiento en cualquier momento y que yo revisare este consentimiento cada ano.

Yo certifico quo yo he leido y entiendo este documento._____**Si, Yo estoy do acuerdo firmar.**_____ **No, Yo no estoy de acuerdo firmar**. Por favor ponga todos los nombres de sus ninos que asisten a la escuela Longfellow.

_____
Nombre del Padre o Tutor(Letra do molde)

_____
Firma del Padre o Tutor

_____ _____
Nombre del estudiante(s) **Salon**

_____
Firma de Persona de Proyecto SMART

_____ _____
Salon

_____
Fecha

_____ _____
Salon

CONSENT TO TREATMENT
AND
CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION:
BLUEGRASS INTERAGENCY MOBILIZATION FOR PROGRESS IN ADOLESCENT AND CHILDREN'S TREATMENT
INTERAGENCY INFORMATION EXCHANGE

I,_____, hereby declare that I am the parent____ or guardian____ who is a child (SS# _ _ _ - _ _ _ - _ _ _ _) applying for services provided by Bluegrass IMPACT, a project of the Cabinet for Human Resources and the Bluegrass Regional Mental Health/Mental Retardation Board. Inc. I hereby give permission to those agencies or providers affiliated with Bluegrass IMPACT, a listing of which has been given to me, to provide services to my child including consultation with agencies which way not have had direct contact with my child.

I recognize that the services for my child's condition require the collaboration of numerous agencies and service providers. I understand that this collaboration requires the disclosure of information about my child so as to help the various service providers to make necessary assessments and service plans.

I understand that the following information may be released to service providers:

1. The full name and other identifying information regarding my child and our family.

2. Diagnostic and assessment information including psychological and psychiatric evaluations, medical histories, educational and social histories. These evaluations may include references to other family members.

3. Treatment and/or educational rehabilitation or habilitation plans.

4. Current observations a f behavior.

5. Recommendations to other providers.

The purpose of this disclosure shall be to facilitate service delivery to my child.

I further understand that the information generated or obtained by the project can be shared with the agencies or providers affiliated with the project.

This authorization to release information extends to the various interagency committees and response teams of project IMPACT. I authorize data to be shared with the Cabinet for Human Resources. Department for Mental Health and Mental Retardation Services, Division of Mental Health. The purpose of this disclosure is to assist in needs assessment and planning for future services.

Sample Request of Non-Parent for Access to Education Record

To: [Name of designated official]

From: _____

[Name, title, organization]

I hereby request permission to examine the following part(s): _____

_____

of the official education records of _____[name(s) of student], student(s) at

_____ [name of agency or school]. I certify that I am (check one as appropriate):

___ An authorized official of another school system in which the student intends to enroll.

___ An authorized representative of the Comptroller General of the United States.

___ An authorized official of the financial institution to which the student applied to receive financial aid. The purpose of this request is to determine eligibility, amount of aid, conditions of aid award, and enforcement of award terms and conditions.

___ An authorized official of an accrediting organization. I understand that release is allowed on the conditions only appropriate members of my organization view the records, and resulting studies do not identify any particular student.

___ An authorized representative of the Secretary of the U.S. Department of Education.

[Add other categories as allowed in state or local laws and regulations.]

I agree that no unauthorized person or organization will have access to any records or information obtained through this request without the written permission of the parents of the student or the student. I understand the maximum penalties for re-disclosure of the record will be [as set forth by federal and state laws and regulations].

Signature: _____ Date: _____

For official use only:

Request approved/denied by: _____ Date: _____

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Sample Request to Review an Education Record

Date: _____

To: [Name of Designated Official]

From: [Name of Parent(s)]

[Address and Phone Number]

Under the provisions of the Family Educational Rights and Privacy Act of 1974 and [insert applicable state/local laws and regulation], I wish to inspect the following education record:

_____

_____

_____

of [Name of Student] _____

School At Which Student is Attending: _____

Requester(s)' Relationship to Student: _____

I do___/do not___ desire a copy of such records. I understand that a reasonable fee will be charged for the copies.

Signature: _____

For official use only

Date Received: _____ *Date Request Verified* _____

Approved ___ *Disapproved* ___ *Reason(s) for disapproval:* _____

Signature of Official Approving/Disapproving Request _____

Date: _____ *Date Notification Sent:* _____

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IV. Additional Resources

- **Who Should Know What? Confidentiality and Information Sharing in Service Integration**
  (By M. Soler & C. Peters, 1993, National Center for Service Integration. From the Early Head Start Nat. Res. Center)

- **Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts**
  (From the N. Central Regional Educational Lab.)

- **Additional References - further reading on confidentiality.**

- **Quick Find on Confidentiality**

Who Should Know What?
Confidentiality and Information Sharing in Service Integration

Excerpted from: Early Head Start, National Resource Center
(http://www.ehsnrc.org/InformationResources/ResourceArticles/ftconf.htm)
To order this Resource Brief in its entirety, please contact: National Center for Service Integration, c/o Child and Family Policy Center, Fleming Building, Suite 1021, 218 Sixth Avenue , Des Moines, Iowa 50309 ,(515) 280-9027

Soler, M. & Peters, C. (1993). Who should know what? Confidentiality and information sharing in service integration. Des Moines, IA: National Center for Service Integration (pp. 5, and 12-19).

All too often, the services available to children and families at risk do not provide a close fit to what they actually need. These parents and children become defined by the labels they receive initially- "mentally ill," "delinquent," "abusive," or "drug dependent." They move into systems that provide limited individual services and ignore broader family issues. This single-issue approach often reduces the effectiveness of the services and misses the opportunity to address the underlying needs of clients in a comprehensive way. Their labels outlive their usefulness and prevent the development of effective services strategies. Different service systems may simultaneously or sequentially serve the same individuals without any coordination or continuity in service provision.

Recognizing this lack of coordination across service systems and the fragmentation and duplication of services it often creates, states and communities seek more integrated approaches that involve greater coordination and collaboration across different agencies and organizations serving children and families. Through interagency partnerships, states and communities hope to fill gaps in services, provide more service continuity and consistency, and reach beyond specific labels to provide more effective services for children and families.

These collaborations face many obstacles. One of the most commonly cited obstacles to interagency collaboration is the existence of confidentiality provisions that appear to restrict agencies from working together. Many professional view these limits on the flow of information - and potentially on the delivery of services - as major impediments to interagency collaboration. This resource brief proposes that confidentiality need not to a significant impediment to interagency collaboration. Based on the work in number of states and communities, several mechanisms exist for effective interagency information sharing that balance the interests of children and families (in protecting information from disclosure) with the interests of agencies who need to share information to work effectively. This brief draw from legal research, literature reviews, and extensive discussions with public officials and agency personnel who have addressed confidentiality concerns successfully. This brief does not aim to be a comprehensive analysis of confidentiality mandates or an exhaustive treatment of what any particular agency must do to satisfy those mandates. It is also not designed to help evade confidentiality provisions.

The interests of children and families in protecting private information from unauthorized disclosure are significant and should not be disregarded. The goal of this brief is to show that agencies can share information while respecting the rights and interests of children and families.

Ways to Facilitate Appropriate Information Sharing

This Resource brief concurs with a larger Youth Law Center study of confidentiality provisions and interagency collaborations which concluded that agencies can successfully balance the privacy interests of clients and their own needs for information sharing and can find ways to share virtually all necessary information.

This chapter discusses how agencies can share needed information. Different agencies have different types of confidentiality requirements. These different requirements must be understood and balanced in order to share information across agencies. The first section discusses obtaining informed consent to release information. The second reviews informal exchanges of information - information sharing authorized by statute, memoranda of understanding, interagency contracts, similar agreements, and court orders. The third discusses safeguards that agencies should employ to assure that information is not shared inappropriately. The final section covers special considerations when dealing with computerized information.

Informed Consent: Releases and Waivers

Informed consent is the most common formal mechanism for exchanging information. The individual, who is the subject of the information, gives consent generally through a signed written release. When the person is legally incompetent, because of age for example, the parent or guardian may sign.

Federal statutes affecting children and families authorize disclosure of confidential information with consent. Privileges rooted in state law may also be waived with consent to release information. Some laws provide specific requirements for the consent to release information. For example, federal alcohol and drug abuse regulations are specific and include a sample release form. State laws stipulate requirements for release of certain kinds of information, such as HIV status and mental health information.

Requirements of release. Any release of personal information should be in writing. It should contain the following:

- The name of the person who is the subject of information.
- The name of the person, program, or agency sharing the information.
- The name of the person, program, or agency with whom the information will be shared.
- The reasons for sharing the information.
- The kind of information that will be shared.
- The signature of the person who is the subject of the information.
- The date the release is signed.
- A statement that the release can be revoked any time by the subject of the information.
- An expiration date for the release or a specific event (such as the end of the school year) that will terminate the release.
- A notice stating that the subject of information has a right to receive a copy of the release.

Notices to clients. Notices to clients of agency's need to release information are critical to the process of obtaining informed consent. These notices inform clients about the purpose and the extent of the consent being requested. Inadequate and confusing notices may mislead clients and impair the relationship between clients and service providers. Clearly presented notices can inform clients of their rights and

help promote trust in the agency. Some statutes include specific requirements for notices to clients regarding the release of confidential information.

Routines for obtaining releases. It is good practice to obtain written releases from clients during initial interviews or as services begin. These releases should cover routine information. If the agency need additional information from the client later, it can obtain a supplemental release.

Multiagency releases. In Iowa, California, and other states, interagency collaborations have developed comprehensive release forms that satisfy the confidentiality mandates of the participating agencies. By signing one release form, the client permits the participating agencies to exchange information and to coordinate services for the client.

Obstacles to Making Consent Informed

Consent to release confidential information must be "informed." The concept is analogous to consent to medical treatment. Generally, a client may give consent to release information in the same circumstances in which he or she may give consent to treatment: the person should possess sufficient knowledge of the risks and benefits of the release of information, and should be capable of making a reasoned choice between alternatives. The person should understand what information will be disclosed, to whom it will be disclosed, the purpose of the disclosure, and the benefits of such disclosure.

Minors and legal "incompetency. " Even though minors are not legally allowed to make certain decisions, some state statutes provide that they may consent to release information. California, for example, allows minors to consent to and release information pertaining to certain types of health care, including care related to pregnancy, rape, sexually transmitted diseases, HIV/AIDS, and drug or alcohol abuse. Some states have "mature minor" rules under which minors found by a court to be sufficiently mature may consent to medical care and to the release of records. Some states allow minors who are legally emancipated, or who are themselves parents, to consent to care and the release of records.

Language and culture. Language and culture may compound the difficulties in obtaining informed consent. A written release of confidential information in a language not understood by the client is invalid. Some confidentiality statutes require that a notice of the consent, or the release form itself, be presented in the individual's native language. Agency personnel should also be aware of different cultural customs and attitudes about privacy. Many immigrants fear that the personal information they provide may put them or their families at risk of deportation. Whenever this is an issue, release forms should state clearly that no personal information will be given to the Immigration and Naturalization Service.

Consequences of refusing to give to consent. In most situations, if an agency worker explains the purposes and benefits of information sharing to a client, the client will consent to release information. If an agency needs the information to fulfill its own legal duties, it may be required to seek a court order to obtain the information. If an agency needs client information to provide additional services and the client initially refuses to allow for sharing of information to provide additional services and the client initially refuses to allow for sharing of information, the agency personnel should seek to show and convince clients that it is in their interest to allow sharing, and that sharing is essential to providing additional services.

Penalty for violation. Violations of confidentiality may result in criminal and civil liability on the part

of the agency and the individual who releases the information. The agency may also face the loss of federal or other funds/. In practice, however, such penalties are quite rare because most information sharing benefits the client. Mistakes can occur, but the agency's beneficial intent is usually evident. Moreover, the initiation of formal proceedings may lead to an even wider disclosure of the information the client wishes to keep confidential. Only in the most unusual situations, in clear violation of applicable regulations, have clients sought relief under the penalty provisions of confidentially statutes. The real force of confidentiality provisions is not in the legal penalties but in making it clear to agency workers that clients have legitimate interests in protecting personal information. Professionalism, ethics, and the tone set by agency administrators all play important roles in enforcing confidentiality provisions.

Other Methods of Sharing Information

Information sharing authorized by statute and regulation. Most federal statutes permit disclosure of confidential information for a variety of administrative purposes without consent of the individual. An agency may share information for a number of reasons, including the following:

- Administration of the program or related programs.
- Audits
- Determinations of eligibility for services.
- Medical emergencies.
- Investigations, prosecutions, or civil or criminal proceedings related to program administration.

Authorized sharing of confidential information is common in state statutes. The statutes fall into several categories: broad authorizations for information sharing among agencies, specific authorizations regarding particular types of information (such as child abuse information), and authorizations to share information to develop more comprehensive services for children and families (such as statutes that establish multidisciplinary teams to develop treatment plans).

Interagency agreements and memoranda of understanding. Under several federal and state statutes, agencies may enter into agreements to share information about clients to better achieve service goals. For example, federal regulations concerning alcohol and drug abuse authorize interagency information exchanges under a "qualified service organization agreement" (QSOA). Statutes in several states contain similar authorizations that allow agencies to share information without obtaining written releases from individual clients. Interagency agreements should specify:

What information will be shared.
How the information will be shared.
Who will have access to the information.
The *purposes* for information sharing.
Assurances by the participating agencies that they will not disclose the information further except as dictated by the agreement, and that they will resist other efforts to obtain the information.
Other requirements mandated by applicable confidentiality provisions.

Court orders. In recent years some juvenile courts have issued orders to guide interagency sharing of information. These orders allow the routine disclosure of juvenile court information to designated county departments to assist case planning and treatment.

Informal exchanges of information. The most common way to share information among agencies in

informal. It is usually verbal and by telephone. A probation officer may, for example, call a school counselor to find out whether a child is attending school, in compliance with terms of probation. This methods of exchange occurs principally when people who need limited bits of information are familiar with each other and have developed a relationship of trust.

Despite the widespread use of this form of information sharing, it may not comply with statutory requirements. These informal exchanges frequently take place without consent or statutory authorization. If an agency participates in this form of information exchange, it should advise clients that such limited, informal information sharing may occasionally be necessary, and then determine whether the clients have objections to the practice.

The agency will be on safest legal grounds if it obtains voluntary consent, in written form, to the exchange of verbal information, and establishes clearly the types of information exchanges that will occur. Clients are most likely to consent to such information sharing if they know it will help the agency respond to them. While informal and verbal communications often do not result in any written records, they represent communications and therefore do come under confidentiality provisions.

Ensuring Compliance with Information Sharing and Confidentiality Provisions

Whatever the procedures established for information sharing and confidentiality, it is up to agency workers to carry out those procedures. Agencies should strive to provide work places that foster respect for clients and their privacy.

The methods described below can help emphasized the importance of confidentiality and help meet confidentiality obligations.

Gatekeepers. Many agencies designate one individual to act as the "gatekeeper" of confidential information concerning agency clients. This person fields requests for confidential information. Often the gatekeeper is the agency counsel. Other agencies designate a "seasoned" employee with specialized training who develops experience with the confidentiality issue and becomes a local specialist. The gatekeeper's duties may include:

Maintaining a library of confidentiality materials.
Providing training for agency employees on confidentiality requirements.
Responding to requests for information and maintaining records of requests and responses.
Developing forms for information requests.
Suggesting some changes in information management practices when appropriate.
Assuring that records are secure from fire, theft, and other damage.

Confidentiality oaths. Several statutes require confidentiality oaths, particularly for researchers. Some agencies use these staff pledges of confidentiality to promote sensitivity to clients' interests in privacy. The confidentiality oaths are usually written and signed. They constitute promises to use information only for designated agency purposes, and not to disclose the information to any other person or agency unless specifically authorized.

The importance of staff training. To follow legal mandates and respect individuals' right to privacy, it is essential for agencies to establish thorough and ongoing programs of staff instruction. Staff training on confidentiality should include:

The reasons for ensuring confidentiality of information about children and families.
The specific information the agency needs.
The reasons why the agency needs the information.
The type of information the worker's agency will share with other agencies.
The purposes of information sharing among agencies.
The legal provisions, particularly federal and state statutes and regulations, applicable to the agency's work.
The importance of clearly explaining to clients why consent is essential.
The need for sensitivity to language and cultural issues.
The requirements of informed consent and the necessary elements for written releases.
The role of interagency agreements, court orders, and other mechanisms that facilitate interagency information sharing that does not require the consent of clients.
Special issues that arise from the use of automated management information systems.

Working With Computerized Information

The greatest strength of the computer is also its greatest danger: all of the information in all of the files is potentially available to anyone with a computer terminal - all without the consent of the clients. Consequently, automated systems containing client information require more levels and types of security than nonautomated systems. This is particularly significant with today's rapid growth of technology. Most agency records will eventually be stored in computers. When one agency's records become linked on a computer network with another agency's records for the sharing of information, safeguards must be in place to assure that confidential information will not be disclosed improperly. In developing a computerized data system and using it effectively, agencies should go through the following steps:

Determine the purpose of the system.
Obtain the cooperation of all participating agencies.
Develop thorough security procedures.
Train staff carefully.
Provide notices to clients.

Determine the purpose of the system. Automated data management may have several purposes. Some purposes focus on the systems providing services; these include researching needs for services in the community, reporting services provided by particular agencies, evaluating the effectiveness of services, assessing cost-effectiveness of services, and planning for the future. Other purposes focus on meeting the needs of individual clients; these include assisting in comprehensive assessments of client needs, finding services in the community that can meet the client's needs, and tracking the cost of providing the services. Planners should determine the purposes of the system at the design stage because that decision will affect other aspects of the system - such as information accessibility, levels of security, and system usefulness to administrators, policymakers, and workers.

Obtain the cooperation of all participating agencies. The development of an automated system requires a high degree of cooperation among agencies. Agencies must agree on what kind of hardware and software they will use and how they will ensure compatibility. Agencies must also agree on how to identify people in the system (using a selected numerical code). Although these initial steps are rudimentary, they can be substantial obstacles for agencies. Beyond the issues of hardware and software compatibility and common client identifiers, agencies need to agree on many other issues - such as what

information each agency will enter into the system, who will have access to the information in the system, how the information may be used by participating agencies, and which security measures will be instituted to protect confidentiality and the integrity of the system.

Develop thorough security procedures. Agencies should develop several levels of security to properly safeguard automated data systems:

Security of the physical environment. Data tapes and disks should remain in locked rooms when not in use. Access to these materials should be strictly controlled, with chain-of-custody controls on the people who move tapes and disks. Agencies should maintain logs for recording the location of all disks and tapes at all times. Access to computers tapped into the data should be strictly limited.

Security of on-line data. Once the information is stored in the computer system, agencies should limit access to it. This usually involves a series of passwords. Each password allows the user to get deeper into the system, depending on his or her authorization to have that level of information. Security is maintained if each user knows only the passwords that allow access to the information that the user has a legitimate need for. Some information may be so sensitive that agencies will prefer not to enter it into any computer database subject to access from outside agencies.

Use of identifiers to mask personal identities. Agencies should identify individuals whose information is in the system by codes, not by personal names. One of several identifiers could be used, including agency-assigned identifying numbers. Some systems have specialized methods for developing identifiers, such as using certain letters from the client's last name. In theory, only one person knows the true identity of the person, the person who enters the information initially into the computer and assigns an identifier. This technical breach of confidentiality is usually considered minor and inconsequential.

Train staff carefully. The importance of staff training in this area cannot be overstated. Automated systems make so much more confidential information potentially available to so many more workers that the need for regular and comprehensive training is much greater.

Provide notices to clients. Clients should receive notices stating that certain information about them is being recorded on an automated data system and that it will be accessible to others for specific purposes. The notice should specify the type of information entered into the system, the particular individuals or agencies who will have access to the information, the reasons for which they may have access to the information, and the uses they may make of the information. If the information can be shared among agencies, pursuant to a statutory provision or an interagency agreement, a general notice to this effect may be sufficient. If the information sharing requires the client's consent, the agencies could develop a common consent form that the client can sign only once.

Confidentiality provisions strike a balance between the interests of children and families in protecting information from disclosure and the interests of agencies in sharing information. By using the principles and mechanisms described in this brief, agencies should not find that confidentiality provisions significantly impede interagency collaboration. Many agencies both share information and respect the privacy interests of children and families.

Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts

Excerpted from: North Central Regional Educational Laboratory
http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs300.htm

ISSUE: Schools and human service agencies increasingly are working together to meet the multiple needs of children and families through school-linked integrated services. One of the most common implementation issues faced by these collaboratives is addressing the need to share information about the people they serve. When confronting multiple and often confusing confidentiality provisions, which place constraints on the exchange of information, many professionals view confidentiality as a barrier to the delivery of services and ultimately to interagency collaboration. Yet addressing confidentiality concerns and developing guidelines for sharing information are essential tasks for collaboratives. "Confidentiality is neither an impenetrable barrier nor something which can easily be disregarded," note Greenberg and Levy (1992); "it is possible to develop means of exchanging information that are effective and practical on a wide scale, while still respecting legitimate rights to privacy" (pp. 1-2).

OVERVIEW: Collaboratives linking students and schools to integrated services recognize the importance of collective endeavor in meeting the range of needs of families and children and in promoting positive youth development. When collaborating to meet their mutual goals and provide services to children and families more effectively, school staff and human service providers often need to share information on common clients. The sharing of this often-sensitive information, however, raises a number of ethical and legal issues relating to confidentiality.

Soler and Peters (1993) describe several ethical reasons for protecting the privacy of children and families when implementing school-linked services: Confidentiality provisions help protect families from embarrassing disclosures, discrimination against themselves or their children, differential treatment, and threats to family and job security. Confidentiality provisions also may encourage students or families to take advantage of services designed to help them (Constantine, Aronson & Wilber, 1994).

Many of the legal protections to confidentiality are constitutionally based in the fundamental right "to be let alone" (Soler & Peters, 1993, p. 6). Right-to-privacy protections also are reflected in federal and state statutes, statutory privileges, agency regulations, ethical standards, and professional practice standards (Soler & Peters, 1993, p. 9).

A 1974 federal law, the Family Educational Rights and Privacy Act (FERPA), protects the privacy interests of students in elementary and secondary schools (and their parents) with regard to certain types of education records. FERPA requires that prior consent be obtained from the student (if 18 or older) or the student's parents before certain types of information can be released from school records. FERPA also gives parents and students access to records, along with the right to challenge the accuracy of those records and make necessary modifications. Changes to FERPA most recently were enacted as part of the Improving Schools Act of 1994,

resulting in the issuance of final regulations of FERPA by the U.S. Department of Education. These amendments help promote information sharing by educators (Laney, 1996).

While FERPA legislates the sharing of education records, other federal statutes and regulations govern confidentiality of other types of information; these statutes and the regulations implementing them may affect the ability of health and social service agencies to share information with schools. In addition, service providers often adhere to formal or informal codes of professional ethics that influence their willingness to share information (Greenberg & Levy, 1992; Larson, 1992). For example, the American Psychological Association (1992) includes a section on Privacy and Confidentiality in its Ethical Principles of Psycholgists and Code of Conduct. Similarly, the National Association of Social Workers (1996) has a section on Privacy and Confidentiality in the Ethical Standards section of its Code of Ethics. All these issues must be considered when schools and service agencies collaborate for information sharing.

As part of their implementation efforts for school-linked services, schools and service agencies may convene a collaborative team that is charged with addressing confidentiality concerns, protecting the privacy of student records, and developing guidelines for information sharing. Because educators, service agencies, and individual service providers may have different perspectives and professional obligations with regard to confidentiality (Office of Educational Research and Improvement, 1996), specific confidentiality concerns should be temporarily set aside until team members have developed a comfortable working relationship. At initial meetings, emphasis should be placed on a common basis of understanding and a shared commitment to the importance of information sharing (Greenberg & Levy, 1992).

After a sense of trust has developed, collaborative partners are ready to discuss the implications of confidentiality for their work together. Partners determine who to involve in the information-sharing process, clarify reasons to share information, identify and address legal issues relating to confidentiality, and identify and address nonlegal issues that may present barriers to information sharing (Greenberg & Levy, 1993).

At this point, collaborating partners will need to review existing statutes, regulations, and court decisions that clarify the laws regarding confidentiality; determine types of data to share and for what purpose; decide how information will be stored; and specify who will have access. Special attention should be paid to information sharing between schools and the juvenile justice system when juvenile delinquency is involved. The partners then can establish policies and procedures for sharing information that balance the legal and ethical privacy rights of individuals and the partners' needs to share information on common clients. The development of policies and procedures for the exchange of information should involve at least one attorney (Greenberg & Levy, 1992).

Next, partners need to determine a method for obtaining informed consent to share client information. The most common method for obtaining this information is through a release form, which is signed by the client or by the parent/guardian if the student is a legal minor. In some special situations involving the provision of medical services to students, however, adolescents may sign the release form.

Partners need to decide whether each agency will use its own release form or if a common release

form will be developed for the collaborative (Soler & Peters, 1993; Greenberg, 1992). In addition to developing release forms, partners need to develop procedures for presenting the release form and obtaining consent from clients. Also to be designed is a systematic way to keep clients continually informed about what information will be shared, with whom, and for what purpose. Partners then should educate themselves regarding the circumstances under which information may be shared without prior consent, particularly when there is duty to warn in order to protect an individual's health or safety.

Determining security procedures for maintaining records and information is another important task for the collaborative. Schrier (1980) suggests that every agency "designate responsibility for managing its record system to an individual and institute such safeguards to security as locked files and requirements for verifying the identity of persons releasing and requesting information" (p. 455). Because client information typically is maintained on computer databases, agencies should develop security procedures to safeguard automated data so that confidential information is not disclosed improperly. Greenberg and Levy (1992) suggest that service providers should consider limiting the data in the system and the data that can be retrieved from the system. Partners also need to develop a system for documenting the disposition of requests to release information.

Everyone on the staff of schools that are part of collaboratives needs to understand confidentiality requirements. The professional development and support opportunities provided by schools should help school staff develop awareness of confidentiality requirements and procedures as well as sensitivity to client needs for privacy.

Resolving confidentiality issues when sharing client and family information has been identified as one of the major factors essential to successful implementation of collaborative school-linked service efforts (Wang, Haertel & Walberg, 1995). But when collaboratives are armed with an understanding of the power of sharing information as well as the ethical and legal ramifications of doing so, they should be able to create information-sharing policies and procedures that will enable them to serve children and families more effectively while protecting privacy rights.

GOALS:

- Collaborative partners reach consensus concerning what information needs to be shared, reasons for sharing that information, and reasons for protecting the privacy of children and families.
- Each client's right to privacy is balanced with the organization's need to share information and effectively serve the client.
- School and agency staff, working with an attorney, are sensitive to clients' rights and knowledgeable about related confidentiality laws, liability issues, and procedures.
- Procedures are in place to guarantee that confidentiality will be upheld.
- Clients are kept informed continually of what information will be shared, with whom, and for what purpose.

ACTION OPTIONS: When a school is part of an integrated services collaborative, school staff and the collaborative team can take the following steps to coordinate efforts so that confidentiality issues are addressed and guidelines for sharing information are used effectively.

School Staff (including administrators, teachers, social workers, nurses, psychologists, counselors, library media specialists, and support personnel):

- Learn about confidentiality and information sharing in service integration.
- Participate in professional development and support to become aware of confidentiality requirements and procedures, the client's right to privacy, and the ramifications of refusal to give consent.

Collaborative Team (comprising educators, service providers, high-level education and agency officials, parents, community members, legislators and judges, attorneys, and management information system staff):

- Allow time to develop a working relationship with service agencies and establish a shared commitment to mutual goals before discussing confidentiality issues.
- Discuss implications of confidentiality and agree upon what information needs to be shared, types of data to share, reasons for sharing information, and reasons for protecting the privacy of children and families.
- Seek legal advice during the process of reviewing federal statutes and regulations, court decisions, agency regulations, and state regulations concerning confidentiality, as well as confidentiality provisions relating to substance-abuse treatment and testimony in court. (The school librarian or library media specialist can help locate copies of laws and regulations.)
- Develop awareness of nonlegal issues that may present barriers to information sharing.
- Follow guidelines for protecting the privacy of student records.
- Determine the feasibility of developing a common release form that can be used by all agencies.
- Develop procedures for presenting the release form and obtaining consent.
- Develop procedures to inform students and families of their rights. (The final regulations of FERPA include A Model Notification of Rights Under FERPA for Elementary and Secondary Institutions.)
- Create procedures to ensure that clients are kept informed continually of all releases of information, including what will be shared, with whom, and for what purpose.

- Determine policies for sharing information based on available standards for data exchange and case management information systems to facilitate the exchange of information, reduce duplication of data entry, and ensure adherence to confidentiality standards.

- Determine the purpose of information maintained on computer databases as well as security procedures to safeguard automated data.

- Create or adapt procedures to protect confidentiality and strategies for protecting the confidentiality of information used across agencies.

- Keep documentation of each request for client information and any client information actually released.

IMPLEMENTATION PITFALLS: One of the major pitfalls encountered by collaborative partners is tackling issues of confidentiality before trust has been developed within the collaborative. Greenberg and Levy (1992) note:

> "Working on confidentiality and information sharing should not be among the first tasks of a developing collaborative effort. Because the subject is complex and a mutually agreed upon approach for sharing is likely to entail compromises, it is important to have working relationships and commitment to joint efforts already firmly in place. The stronger the personal relationships among participants, the more easily confidentiality issues can be addressed. Holding off a bit on the time when the issue is tackled allows a base of trust, mutual understanding, and experience working together to be built." (p. 7).

Another pitfall is that participating institutions and agencies may be reluctant to share information with other agencies because of "feared loss of turf control, distrust of other professionals' use of confidential information, and ethical and legal concerns (including fear of lawsuits) when information leaves traditionally closed systems" (Crowson & Boyd, 1995). Some agencies even may withhold client information. To address these issues, collaboratives must emphasize the importance of trust and communication among partner members. Hendrickson and Omer (1995) state:

> "While confidentiality must be ensured, a priority of comprehensive service schools should be to improve communication within and between agencies, work to change conditions that impede information sharing, and monitor the communication process continuously." (p. 159)

A third pitfall is laws that impede the sharing of information. Such laws often can be altered by legislative action to ease the process of sharing information without substantively changing existing protections. Sometimes laws affecting different agencies are inconsistent, perhaps simply because they were adopted at different times by different drafters. After reviewing such laws, legislators may act to reduce these inconsistencies, making it easier for collaborating agencies to adopt common procedures (Greenberg & Levy, 1992, p. 29).

Interpretations of laws also can impede the sharing of information. According to Laney (1996), educators may interpret FERPA restrictively and then develop correspondingly restrictive confidentiality policies:

> "Many state and local educational agencies and institutions have been overly restrictive in their interpretation of FERPA or in their information release policies. Educators frequently decide to err on the side of caution by establishing policies recognizing a generalized right to privacy with regard to all information on students. Unfortunately, both inaccurate interpretations and restrictive FERPA policies pose significant obstacles to meaningful information sharing between agencies." (p. 1)

The rural or urban setting of the school may contribute to other pitfalls. A rural culture, for example, may pose difficulties for educators and service providers who need to distinguish clearly between their personal and professional roles and their respective sanctions. An urban culture may contribute to overly informal sharing of information that does not adhere to confidentiality guidelines.

There are rare instances when a parent or student does not want to give consent. In these situations, the counselor or service provider should try to determine, without putting pressure on the individual, why the person is refusing to give consent and then seek review of this concern by the involved partners. One approach is to hold an interagency team meeting in which a caseworker presents information about the nonconsenting individual or family but withholds all identifying information so that it is a generic case. With this approach, the caseworker can receive the group's consideration and advice without breaching confidentiality (Greenberg & Levy, 1992). Some confidentiality statutes provide for duty to warn, or sharing information when necessary to protect the health or safety of an individual in an emergency situation.

DIFFERENT POINTS OF VIEW: Some stakeholders believe that sharing a client's personal information with service providers is not really breaching confidentiality but is a means of providing needed services effectively and efficiently to the client.

Others may believe that information should never be shared among service providers because of the possibility for leaks of potentially damaging information, particularly when computers are used to store personal information about clients.

ILLUSTRATIVE CASES: The following examples illustrate how several programs of school-linked integrated services have approached confidentiality.

Confidentiality Issues at Fulton County Schools, Hickman, Kentucky
(http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs3lk31.htm)

Confidentiality Issues at New Beginnings Center for Children and Families, San Diego, California
(http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs3lk11.htm)

Confidentiality Guidelines of Youth Services Teams, Linn County, Oregon
(http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs3lk37.htm)

References on Confidentiality

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3. Dickson, Donald T. Confidentiality and privacy in social work: A guide to the law for practitioners and students. The Free Press: New York, NY, US, 1998. xii, 308pp.

4. O'Sullivan, Colleen; Fisher, Celia B. The effect of confidentiality and reporting procedures on parent-child agreement to participate in adolescent risk research. Applied Developmental Science. 1997. 1 (4): p. 187-199.

5. Varhely, Susan C.; Cowles, Janelle Counselor self-awareness and client onfidentiality: A relationship revisited. Elementary School Guidance & Counseling. American School Counselor Association: US, 1991 Apr. 25 (4): p.269-276.

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7. Barwick, Nick, Ed Clinical counselling in schools. Routledge: London, England, 2000. ix, 185pp. Series title: Clinical counselling in context .

8. McGivern, Julia E.; Marquart, Ann M. Legal and ethical issues in child and adolescent assessment. In: Edward Steven Shapiro, Ed; Thomas R. Kratochwill, Ed. Behavioral assessment in schools: Theory, research, and clinical foundations (2nd ed.).. The Guilford Press: New York, NY, US, 2000. p. 387-434 of xvii, 522pp.

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10. Gottlieb, Richard M. The current crisis in psychotherapy at boarding schools: protecting the interests of the child and of the school. In: Aaron H. Esman, Ed; Lois T. Flaherty, Ed; et al. Adolescent psychiatry: Developmental and clinical studies, Vol. 23.. The Analytic Press, Inc: Hillsdale, NJ, US, 1998. p. 233-246 of xii, 299pp.
Series title: Annals of the American Society for Adolescent Psychiatry.

11. Patterson, Terence E. Ethical school counseling: Managing a balancing act. In: Larry L. Palmatier, Ed. Crisis counseling for a quality school community: Applying Wm. Glasser's choice theory.. Accelerated Development, Inc: Philadelphia, PA, US, 1998. p. 77-90 of xxx, 505pp.

12. Weist, Mark D. Mental health services in schools: Expanding opportunities. In: Harinder S. Ghuman, Ed; Richard M. Sarles, Ed. Handbook of child and adolescent outpatient, day treatment and community psychiatry.. Brunner/Mazel, Inc: Philadelphia, PA, US, 1998. p. 347-357 of xvii, 393pp.

13. Quirk, John P. Professional and ethical issues in family-school mental health interventions. In: Diane T. Marsh, Ed; Richard D. Magee, Ed. Ethical and legal issues in professional practice with families.. John Wiley & Sons, Inc: New York, NY, US, 1997. p. 161-179 of xiv, 322pp. Series title: Wiley series in couples and family dynamics and treatment.

This Center Response is from our website at http://smhp.psych.ucla.edu To access the online version, *visit our website, click "Search & Quick* Find" on the left and then scroll down in the list of "Center Responses" to *confidentiality*

A Center Response:

The following reflects our most recent response for technical assistance related to CONFIDENTIALITY. This list represents a sample of information to get you started and is not meant to be an exhaustive list.

(Note: Clicking on the following links causes a new window to be opened. To return to this window, close the newly opened one).

If you go online and access the Quick Find, you can simply click over to the various sites to access documents, agencies, etc. For your convenience here, the website addresses for various Quick Find entries are listed in a table at the end of this document in order of appearance, cross-referenced by the name of the resource.

Center Developed Resources and Tools

- Addressing Barriers to Learning: New Directions for Mental Health in Schools
- An Introductory Packet on Confidentiality and Informed Consent
- Confidentiality: Competing Principles, Inevitable Dilemmas
- Reframing the Confidentiality Dilemma to Work in Children's Best Interests
- School-Based Client Consultation, Referral, and Management of Care

Relevant Publications on the Internet

- American Academy of Pediatrics - Policy Statement: The Adolescent's Right to Confidential Care When Considering Abortion
- American Psychological Association (APA): Ethical principles of psychologists and code of conduct
- Code of Practice: Student Confidentiality (University of St. Andrews)
- Confidential Health Care for Adolescents: A Position Paper of the Society for Adolescent Medicine
- Confidentiality and the Educational Records of Students with Disabilities: Questions and Answers for School Staff
- Confidentiality for Teens
- Confidentiality in Adolescent Health Care
- Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts
- Do parents of adolescents have the right to see their child's chart and does the doctor have the obligation to tell the parents things that the child may want kept private?
- Documentation of Psychotherapy by Psychiatrists
- Educational partnerships case studies
- Ethical and Legal Issues in School Counseling
- HHS Announces Final Regulation Establishing First-Ever National Standards to Protect Patients' Personal Medical Records
- Jaffee, Special Administrator for Allen, Deceased v. Redmond et al.
- Medicaid and School Health Guide
- National Association of Social Workers: NASW code of ethics
- Position Statement: School Social Workers and Confidentiality
- Protecting the Privacy of Student Records: Guidelines for Education Agencies
- Sharing information: A guide to the Family Educational Rights and Privacy Act and participation in juvenile justice

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programs
- The Importance of Collective Endeavor
- Unlocking Secrets: Confidentiality in Physician Encounters with Adolescents (PDF Document, 66K)

Selected Materials from Our Clearinghouse

- A Guide to School-Based and School-Linked Health Centers Volume V: Introduction to Legal Issues
- Confidentiality & Collaboration: Information Sharing in Interagency Efforts
- Confidentiality: A Manual For The Exchange of Information in a California Integrated Children's Services Program
- Critical Issues Planning Session: Legal and Ethical Issues in the Practice of School Mental Health
- Ethical Dilemmas in School-Based Clinics
- Ethical Obligations of Special Services Personnel
- Family Involvement in Expanded School Mental Health
- Glass Walls: Confidentiality Provisions and Interagency Collaborations
- Liability in Child Therapy and Research
- Overcoming Confidentiality Barriers in Human Services Collaboration for At-Risk Youth
- Rights of Minors to Treatment
- School-Based Primary Care in a Managed Care Environment: Options and Issues
- State Minor Consent Statutes: A Summary
- Students Rights in Mental Health Treatment
- Supreme Court Protects Confidentiality in Mental Health
- The Need to Know: Juvenile Record Sharing
- Understanding Sexual Assault and Child Sexual Abuse
- Who Should Know What? Confidentiality and Information Sharing in Service Integration

Related Agencies and Websites

- American School Counselor Association
- Center for Psychology in Schools and Education
- Mental Health Education Page - Confidentiality
- National Center for Service Integration
- National Clearinghouse on Child Abuse and Neglect - Confidentiality Bibliography

Relevant Publications that Can Be Obtained From Your Local Library

- *All about Sex: The School Counselor's Guide to Handling Tough Adolescent Problems. Practical Skills for Counselors Series.* By Bradley, Loretta J.; Jarchow, Elaine; Robinson, Beth (1999). Corwin Press: Thousand Oaks, CA. 127p. To order, please visit the Corwin Press website (Go to "Shop Corwin - Book Series" then to "Practical Skills for Counselors Series")
- "Balancing Privacy and Confidentiality Rights with Duties of Disclosure and Dissemination of Federal Education Statistics" By Newton, Kenneth B. & Pullin, Diana C. (1996). In *Journal of Law and Education*, 25(1), Winter: p1-53.
- "Confidentiality of Educational Records: Serious Risks for Parents and School Districts" By Walker, Peter A. & Steinberg, Sara Jane (1997). In *Journal of Law and Education*, 26(3), July: p11-27.
- "Confidentiality and the Duty to Protect: A Balancing Act for School Personnel" By Drodge, Edward (1997). In *Canadian Journal of Education*, 22(3), Summer: p312-322.
- *Guidelines for Protecting Confidential Student Health Information.* By Oddonne, Angela & Rubin, Marcia (2000). American School Health Association (ASHA). To order online please visit the ASHA website. (Go to "Publications" and then to "School Nurse/Health Services Material")
- "HIV/AIDS in Early Childhood Centers: The Ethical Dilemma of Confidentiality versus Disclosure" By Black, Sandra M. (1999). In *Young Children*, 54(2), March: p39-45.
- *Legal and Ethical Dimensions for Mental Health Professionals.* By Malley, Patrick Brendan & Reilly, Eileen Petty (1999). Accelerated Development, Taylor & Francis Group: Bristol, PA. 338p.
- *Privacy and Confidentiality in Mental Health Care.* By Gates, John J. & Arons, Bernard S. (2000). Brookes Publishing. To order online please visit the Brookes Publishing Website.
- *Professional Counselor's Guide to Federal Law on Student Records.* By the American Counseling Association (1999). Alexandria, VA. 59p.
- "Respecting and Breaking Confidences: Conceptual, Ethical and Educational Issues" By Cain, Paul (1999). In *Nurse Education Today*, 19(3), April: p175-81.

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Also, see our Center Response Quick Find page on LEGAL AND ETHICAL ISSUES IN SCHOOL HEALTH/MENTAL HEALTH, or our Center Response Quick Find page on MEMORANDA OF AGREEMENTS (INCLUDING JOINT AGENCY AGREEMENT, MOUS).

We hope these resources met your needs. If not, feel free to contact us for further assistance. For additional resources related to this topic, use our search page to find people, organizations, websites and documents. You may also go to our technical assistance page for more specific technical assistance requests.

If you haven't done so, you may want to contact our sister center, the Center for School Mental Health Assistance at the University of Maryland at Baltimore.

If our website has been helpful, we are pleased and encourage you to use our site or contact our Center in the future. At the same time, you can do your own technical assistance with "The fine Art of Inquiry" which we have developed as an aid for do-it-yourself technical assistance.

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Shortcut Text	Internet Address
Addressing Barriers to Learning: New Directions for Mental Health in Schools	http://smhp.psych.ucla.edu/guidepak.htm#barriers
An Introductory Packet on Confidentiality and Informed Consent	http://smhp.psych.ucla.edu/intropak.htm#confid
Confidentiality: Competing Principles, Inevitable Dilemmas	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC13
Reframing the Confidentiality Dilemma to Work in Children's Best Interests	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC11
School-Based Client Consultation, Referral, and Management of Care	http://smhp.psych.ucla.edu/techpak.htm#schoolbased
American Academy of Pediatrics - Policy Statement: The Adolescent's Right to Confidential Care When Considering Abortion	http://www.aap.org/policy/01348.html
American Psychological Association (APA): Ethical principles of psychologists and code of conduct	http://www.apa.org/ethics/code.html
Code of Practice: Student Confidentiality (University of St. Andrews)	http://www.st-and.ac.uk/codes/studentconf.html
Confidential Health Care for Adolescents: A Position Paper of the Society for Adolescent Medicine	http://www3.uchc.edu/~sam/activities/position/confidential.html
Confidentiality and the Educational Records of Students with Disabilities: Questions and Answers for School Staff	http://www.kde.state.ky.us/osis/children/confid/confscho.asp
Confidentiality for Teens	http://www.schoolnurse.com/med_info/Confidentiality_for_teens.html
Confidentiality in Adolescent Health Care	http://www.aap.org/policy/104.html
Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts	http://www.ncrel.org/sdrs/areas/issues/envrnmnt/css/cs300.htm
Do parents of adolescents have the right to see their child's chart and does the doctor have the obligation to tell the parents things that the child may want kept private?	http://www.nationalcpr.org/askcprarchive3.html
Documentation of Psychotherapy by Psychiatrists	http://www.psych.org/pract_of_psych/psych_doc.cfm
Educational partnerships case studies	http://www.ed.gov/pubs/Partners/
Ethical and Legal Issues in School Counseling	http://www.ed.gov/databases/ERIC_Digests/ed315709.html
HHS Announces Final Regulation Establishing First-Ever National Standards to Protect Patients' Personal Medical Records	http://www.hhs.gov/news/press/2000pres/00fsprivacy.html
Jaffee, Special Administrator for Allen, Deceased v. Redmond et al.	http://supct.law.cornell.edu/supct/html/95-266.ZS.html
Medicaid and School Health Guide	http://www.hcfa.gov/medicaid/scbintro.htm
National Association of Social Workers: NASW code of ethics	http://www.naswdc.org/pubs/code/default.htm
Position Statement: School Social Workers and Confidentiality	http://www.sswaa.org/about/publications/confidentiality.html
Protecting the Privacy of Student Records:	http://nces.ed.gov/pubs97/p97527/index.html

Shortcut Text	Internet Address
Guidelines for Education Agencies	
Sharing information: A guide to the Family Educational Rights and Privacy Act and participation in juvenile justice programs	http://www.ed.gov/offices/OM/findex.html
The Importance of Collective Endeavor	http://www.ncrel.org/cscd/pubs/lead21/2-1d.htm
Unlocking Secrets: Confidentiality in Physician Encounters with Adolescents (PDF Document, 66K)	http://www.ices.on.ca/PDFs/Informed/vol5issue3.pdf#Page=6
A Guide to School-Based and School-Linked Health Centers Volume V: Introduction to Legal Issues	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2312DOC43
Confidentiality & Collaboration: Information Sharing in Interagency Efforts	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC8
Confidentiality: A Manual For The Exchange of Information in a California Integrated Children's Services Program	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC14
Critical Issues Planning Session: Legal and Ethical Issues in the Practice of School Mental Health	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=1406DOC8
Ethical Dilemmas in School-Based Clinics	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC6
Ethical Obligations of Special Services Personnel	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=1700DOC6
Family Involvement in Expanded School Mental Health	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2304DOC35
Glass Walls: Confidentiality Provisions and Interagency Collaborations	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC9
Liability in Child Therapy and Research	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=1406DOC7
Overcoming Confidentiality Barriers in Human Services Collaboration for At-Risk Youth	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC10
Rights of Minors to Treatment	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC2
School-Based Primary Care in a Managed Care Environment: Options and Issues	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=1404DOC30
State Minor Consent Statutes: A Summary	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC7
Students Rights in Mental Health Treatment	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC1
Supreme Court Protects Confidentiality in Mental Health	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=4100DOC10
The Need to Know: Juvenile Record Sharing	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC5
Understanding Sexual Assault and Child Sexual Abuse	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=3007DOC7
Who Should Know What? Confidentiality and Information Sharing in Service Integration	http://smhp.psych.ucla.edu/smhp.exe?ACTION=POPUP&ITEM=2306DOC12

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Shortcut Text	Internet Address
American School Counselor Association	http://www.schoolcounselor.org/
Center for Psychology in Schools and Education	http://www.apa.org/ed/cpse.html
Mental Health Education Page - Confidentiality	http://www.counselingandeducation.com/
National Center for Service Integration	http://eric-web.tc.columbia.edu/families/TWC/ncsi.html
National Clearinghouse on Child Abuse and Neglect - Confidentiality Bibliography	http://www.calib.com/nccanch/pubs/bibs/confidentiality.cfm
visit the Corwin Press website	http://www.corwinpress.com/
visit the ASHA website	http://www.ashaweb.org/
visit the Brookes Publishing Website	http://www.pbrookes.com/e-catalog/books/gates-4269/index.htm
LEGAL AND ETHICAL ISSUES IN SCHOOL HEALTH/MENTAL HEALTH	http://smhp.psych.ucla.edu/qf/p1406_01.htm
MEMORANDA OF AGREEMENTS (INCLUDING JOINT AGENCY AGREEMENT, MOUS)	file:///J:/qf/confid_qt/mou.htm
search	http://smhp.psych.ucla.edu/search.htm
technical assistance page	http://smhp.psych.ucla.edu/techreq.htm
Center for School Mental Health Assistance	http://csmha.umaryland.edu/
"The fine Art of Fishing"	http://smhp.psych.ucla.edu/selfhelp.htm

V. Originals for Overheads

The following can be copied to overhead transparencies to assist in presenting the material.

- **Reasons for Protecting the Privacy of Children and Families**
- **Limits of Confidentiality**
- **Required Contents of a Release Form**
- **Confidentiality Practices**
- **Helping Students by Sharing Info –**
  When it is in their best interests to do so.

Reasons for Protecting the Privacy of Children and Families

(From Critical Issue: Addressing Confidentiality Concerns in School-Linked Integrated Service Efforts)

Soler and Peters (1993) outline several reasons for protecting the privacy of children and families:

- "Confidentiality restrictions ***protect embarrassing personal information from disclosure.***

- Confidentiality provisions also ***prevent the improper dissemination of information about children and families that might increase the likelihood of discrimination against them*** (i.e. HIV status, mental health history, use of illegal drugs, or charges of child abuse).

- Protecting confidential information can be necessary to ***protect personal security*** (i.e. domestic violence situation).

- Confidentiality provisions also ***protect family security***. (i.e. Immigrant families may shy away from using services for fear that the Immigration and Naturalization Service (INS) will take action against them).

- Restricting the information that human service agencies receive may also ***protect job security***.

- Children and families also want to ***avoid prejudice or differential treatment*** by people such as teachers, school administrators, and service providers.

- Confidentiality provisions also may be necessary to ***encourage individuals to make use of services designed to help them***. Adolescents may avoid seeking mental health services at a school-based clinic, for example, if they believe that information will get back to their teachers, parents, or peers." (pp. 6-7)

WHAT WE SAY HERE STAYS HERE
(Unless you give me permission to share it)

There are some exceptions to this rule:

If you:

- ➔ Tell me you are being abused, physically and/or sexually,
- ➔ Tell me you are going to hurt yourself, or…
- ➔ Tell me you are going to hurt someone else.

In these cases, I must contact someone to help.

Excerpted from the National Assembly on School-Based Health Care Operations Tool Kit.
http://www.nasbhc.org

Required Contents of a Release Form

(From Soler and Peters, 1993)

Any release of personal information should be in writing. It should contain the following:

- The name of the person who is the subject of information.
- The name of the person, program, or agency sharing the information.
- The name of the person, program, or agency with whom the information will be shared.
- The reasons for sharing the information.
- The kind of information that will be shared.
- The signature of the person who is the subject of the information.
- The date the release is signed.
- A statement that the release can be revoked any time by the subject of the information.
- An expiration date for the release or a specific event (such as the end of the school year) that will terminate the release.
- A notice stating that the subject of information has a right to receive a copy of the release.

Confidentiality Practice

- Be proactive . . . become familiar with state laws and regulations and school district policies governing confidentiality and minors, before this information is needed.

- Become familiar with laws and regulations governing confidentiality and minors as they pertain to different school personnel (that is, school counselors, school psychologists, and school nurses, school social workers).

- Develop and use written guidelines for sharing confidential information with third parties.

- Develop and use written consent forms for all parties involved with students when sharing confidential information.

- Maintain written documentation indicating with whom confidential information has been shared.

- When sharing confidential information, know what information can and cannot or should or should not be shared.

(From: *Confidentiality and School Social Work: A Practice Perspective* - (Practice update from the National Association of Social Workers – http://www.naswdc.org/practice/update/cfs0202.htm)

Confidentiality Practice (cont.)

- Ask the following questions when deciding to share confidential information: "Why is it important that this information be shared?" "How will the student and the student's family benefit by a decision to share or not share information?" "Does sharing the confidential information outweigh maintaining confidentiality?" "What will be the effect on the student's learning?"

- Seek direction on this issue in a wider context through professional development opportunities or in-service training for a school or school district.

- Discuss limits of confidentiality with student and student's family at the onset of services.

- When possible or appropriate, discuss breaches of confidentiality with the student and the student's family in a timely manner.

- Become familiar with limits of confidentiality and "information sharing" as they pertain to IDEA.

- When preparing social histories for students who receive special education services under IDEA, include a statement indicating that the information reported is confidential.

Helping Students by Sharing Info –

When it is in their best interests to do so.

The dilemma is how to avoid undermining confidentiality and still share info when it is in the best interest of a student to do so.

Good practice calls for helping a student share info by:

- Enhancing a student's motivation to do so when it is in her/his best interest
- Empowering students to do so
- Minimizing negative consequences of disclosure.

See *The Confidentiality Dilemma* excerpted from: "Reframing the confidentiality dilemma to work in children's best interests" by L. Taylor & H. Adelman. Published in *Professional Psychology: Research and Practice*, v. 20, pp. 79-83, 1989. Also excerpted in the Center Introductory Packet on "Confidentiality and Informed Consent.")